Public Utilities

FORTNIGHTLY

February 4, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

"CAREFUL, THERE!"

"I'M PRAYIN'! LET'ER GO, MALCOLM!"

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I-T-E

AIR SWITCHGEAR

IMMERSED IN AIR — ENCASED IN STEEL

ARMY E NAVY

I-T-E

CIRCUIT BREAKER CO., PHILADELPHIA, PA.

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Public Utilities Fortnightly

VOLUME XXXI *February 4, 1943* NUMBER 3

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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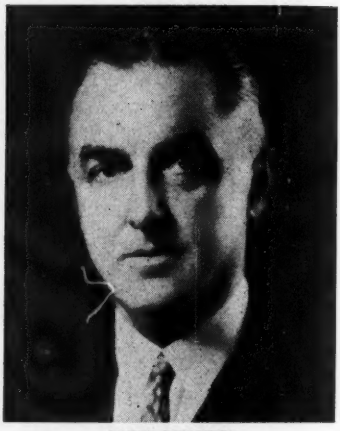
Pages with the Editors

THE other day we went down personally to take a belated look at the new Congress. It seemed to us, as we contemplated it from our perch in the gallery, to be a younger if not brighter aggregation of the people's choice. (A journalist friend, who makes a specialty of such things, counted eleven less bald heads in the Seventy-eighth Congress, as compared with the Seventy-seventh Congress.) We looked in vain for the six other lady Congresswomen besides La Luce. In fact we hung around awhile, hoping to see the glamorous Connecticut Representative herself. She was off somewhere, probably sharpening her finger nails for those lady newspaper writers in Washington.

BUT we were interested to note a number of old landmarks which were not swept away by the minor deluge of November 3, 1942. The Honorable John Rankin of Mississippi arose in his accustomed place and gave his accustomed speech on the systematic overcharge of American people in various places for their electricity. It is hard to imagine a Congress in session without a speech like that from the Tupelo crusader; it sort of makes the session official.



JOHN STILWELL

Loss of a utility workman can be just as serious as a field casualty.

(SEE PAGE 152)

RALPH B. COONEY

There's a brave new world awaiting utility men with heart and vision.

(SEE PAGE 156)

WE listened with amiable toleration to the introduction of widely varied proposals. Regretfully, we report that we could not approve of at least one project—that of Representative Domengeaux of Louisiana. He threatened to bring a dozen muskrats from his native state, have them cooked in the White House, and served to Secretary of Agriculture Wickard.

WITHOUT wishing to dispute anybody's taste in cooking (especially such world-famed *cognoscente* as the denizens of the Creole country), we simply point out that the Constitution expressly protects all—even the Secretary of Agriculture—from cruel and unusual punishment. We also recall that Mrs. Grover Cleveland once firmly overruled the late President (who was passionately fond of corned beef and cabbage) by forbidding the cooking of that comestible in the White House on the ground that it would smell up the place and disedify foreign diplomats.

WE also noted with interest Representative Cox of Georgia thundering denunciations against the bureaucrats of Washington—another repeat performance which is quite a favorite with some of the less enthusiastic ad-

mirers of the administration. Speaker of the House Rayburn seemed in a gayer mood than at any time during the last session. The pages of the House still shoot paper clips at one another with irreverent disregard for the solemn economic discussion of a learned member from Pennsylvania.

IN short, the exterior aspects of the old well of the House of Representatives has not been changed so much after all, despite the advent of over 100 new faces. We went away with the comfortable feeling that the country is probably safe and in good hands as long as they serve such excellent bean soup in the House restaurant.

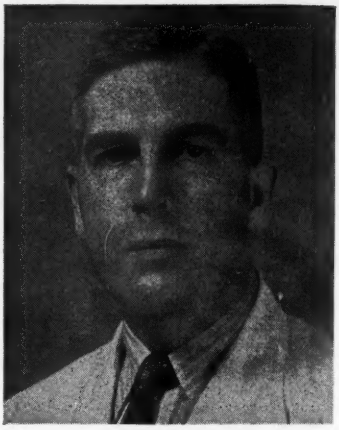
AMONG the many problems which the new Congress will be called upon to solve is the perennial bill to merge the domestic telegraph companies (HR 499). This year the advance dope is to the effect that Congress will really pass the bill. (It failed by inches in the last session.) Furthermore, something new has been added to the latest bill—authority to merge international cable, radio, and communication companies on an all-American basis. There is more behind this international planning than meets the eye. A provocative discussion of it can be found in the article by our Washington correspondent, HERBERT COREY, entitled "Wanted: A Bright Young Octopus" (beginning page 143).

ONE casualty which we want to avoid during this war is the splendid safety record of our public utility industry. In this issue we present an article (beginning page 152) by one who is doing more, perhaps, than anyone else to see to it that public utility operation will be as safe as it ever was, if not more so. He is COLONEL JOHN STILWELL, vice president of the Consolidated Edison Company of New York city and president of the National Safety Council.

HERBERT COREY

In international trade it takes an octopus to beat an octopus.

(SEE PAGE 143)



T. N. SANDIFER

Is Federal subsidy a necessary prerequisite to public ownership.

(SEE PAGE 135)

COLONEL STILWELL, following his graduation from Yale in 1907, became a cadet engineer with the old Rochester Railway & Light Company. He entered the employment of Consolidated Edison in 1909 and interrupted his service with that organization during World War I to serve as assistant chief of staff of the Fourth Army Corps, returning from Germany in 1919 with the rank of Lieutenant Colonel. He is also president of the American Museum of Safety.

RALPH B. COONEY, whose article on post-war opportunities for public service begins on page 156, is in the real estate and construction business in New York city. As an avocation he writes frequent articles on the subject of business management in various trade and business publications.

T. N. SANDIFER, author of the opening article in this issue, is a former White House correspondent and Washington newspaperman, now affiliated with our editorial staff.

THE next number of this magazine will be out February 18th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129–192, from 46 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JAMES F. BYRNES
Director of Economic Stabilization.

"If a man fears the Congress he fears the people."

EDITORIAL STATEMENT
Forbes.

"Crushing taxes on one class finally hurt all classes."

WALTER F. GEORGE
U. S. Senator from Georgia.

"The election returns constitute a 'Stop, Look, and Listen' sign painted in red."

EARL PREVETTE
Author.

"Instead of thinking one minute and talking for five, try thinking five and talking one."

LEON HENDERSON
Former Chief, Office of Price Administration.

"If you want to learn something about bureaucrats, run into one of those income tax collectors in Washington."

EDITORIAL STATEMENT
Railway Age.

"Railway efficiency in the transportation of passengers . . . has thus far this year been the greatest in history."

EDITORIAL STATEMENT
The Wall Street Journal.

"A tax to curb inflation must be laid on the power house of inflation; namely, the area of war-expanded personal incomes."

EDITORIAL STATEMENT
The New Yorker.

"As soon as a control measure simply antagonizes everybody, then it is no longer worth the ration cards it is printed on."

CHARLES W. WILSON
President, General Motors Corporation.

"The first basic fallacy in attacking this man-power problem is the idea that men are interchangeable. Men are like steel; they all differ in temper and in alloy."

WILLIAM GREEN
President, American Federation of Labor.

"When the war is won we must win the peace. Then we must devote our energy, our power, our persuasive influence, all we possess, in an effort to bring unity and solidarity within the ranks of labor."

PAUL V. McNUTT
Director, War Manpower Commission.

"The power of compulsion is in essence a protection to the great majority who act voluntarily. They must be made to feel that when they act voluntarily the government approves the action, and is prepared to require compliance by the few who refuse to coöperate."

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As a service to employers, Burroughs has reproduced, in convenient, 8⅜ x 5¾ card form, the official "wage bracket" figures shown in the government regulations for determining the amount to be withheld from the pay of employees. Already thousands of Burroughs users—and others—are using these tables to save the many computations required in handling this new problem.

These free tables are typical of many timely helps offered by Burroughs to aid business firms in meeting new wartime figuring and accounting problems with their present equipment. Call the local Burroughs office, or write to—

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★ FOR VICTORY—BUY UNITED STATES WAR BONDS AND STAMPS ★

DAVID GINSBURG
General counsel, Office of Price Administration.

"The used goods trade has been, by and large, a good deal of a poor relation; but I predict that 1943 will see it coming out in good society, and no one need feel ashamed to associate with it. The secondhand dealer is going to put on a top hat."

WENDELL L. WILLKIE

"We must not listen to those who say 'win the war now' and leave post-war solutions to our leaders and to our experts. We, the people, must begin to solve these problems today, not tomorrow. For we know that bayonets and guns are feeble as compared with the power of the idea."

WALTER S. GIFFORD
President, American Telephone and Telegraph Company.

"At the urgent request of the Board of War Communications, we are spending millions of dollars in advertising to get the public to reduce its use of long distance, and now comes the commission [FCC] seeking to reduce rates, which will do just the opposite. I fail to see how by any stretch of the imagination a reduction in long-distance rates will help win the war."

HERBERT R. O'CONOR
Governor of Maryland.

"I cannot refrain from reminding the citizens of a danger which will become increasingly grave unless there is watchfulness. By this I mean the danger of departing from our dual form of government, with the states and the Federal union as separate sovereign powers. In our eagerness to furnish all support to the Federal government in the war effort, there is latent danger that we may at the same time be laying the foundation for a definite change-about of our way of life."

DAVID E. LILIENTHAL
Chairman, Tennessee Valley Authority.

"There is no sacred class in America that should be exempt from public criticism. . . . For the past nine years, in association with my colleagues, I have been engaged in administering a project that almost continuously has been the center of controversy of one kind or another. I can testify from this rather intensive personal experience that (a) I have had plenty criticism from the press, some of it far from factual; (b) I never enjoyed any part of it; and (c) much of it was good for me and good for the TVA; none of it did any permanent harm."

ROBERT R. NATHAN
Chairman, planning committee, War Production Board.

"A constructive and efficient program of public works for periods when savings are in excess of investment demand is necessary to minimize the prospects of depression and unemployment. In fact, the people may desire to have more government investment in the form of educational, recreational, power, transportation, and other facilities. Who can today deny the need and value of TVA and the other big government power projects? How much better off we would be had our unemployed resources of the 30's been used to build the St. Lawrence waterway, the Florida canal, or the Alaska highway."

R&IE HI-PRESSURE CONTACT *Switching Equipment*

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Now, when War Production makes prior claim to the manufacturer's output, is the time to seek quality and service as never before.

It's good business—Patriotic business—to demand the maximum service from available raw materials.

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As you seek quality and Service, remember that R&IE has been a

SPECIALIST

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GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating 100% *with the War Effort*

Cooking up an Axis dish

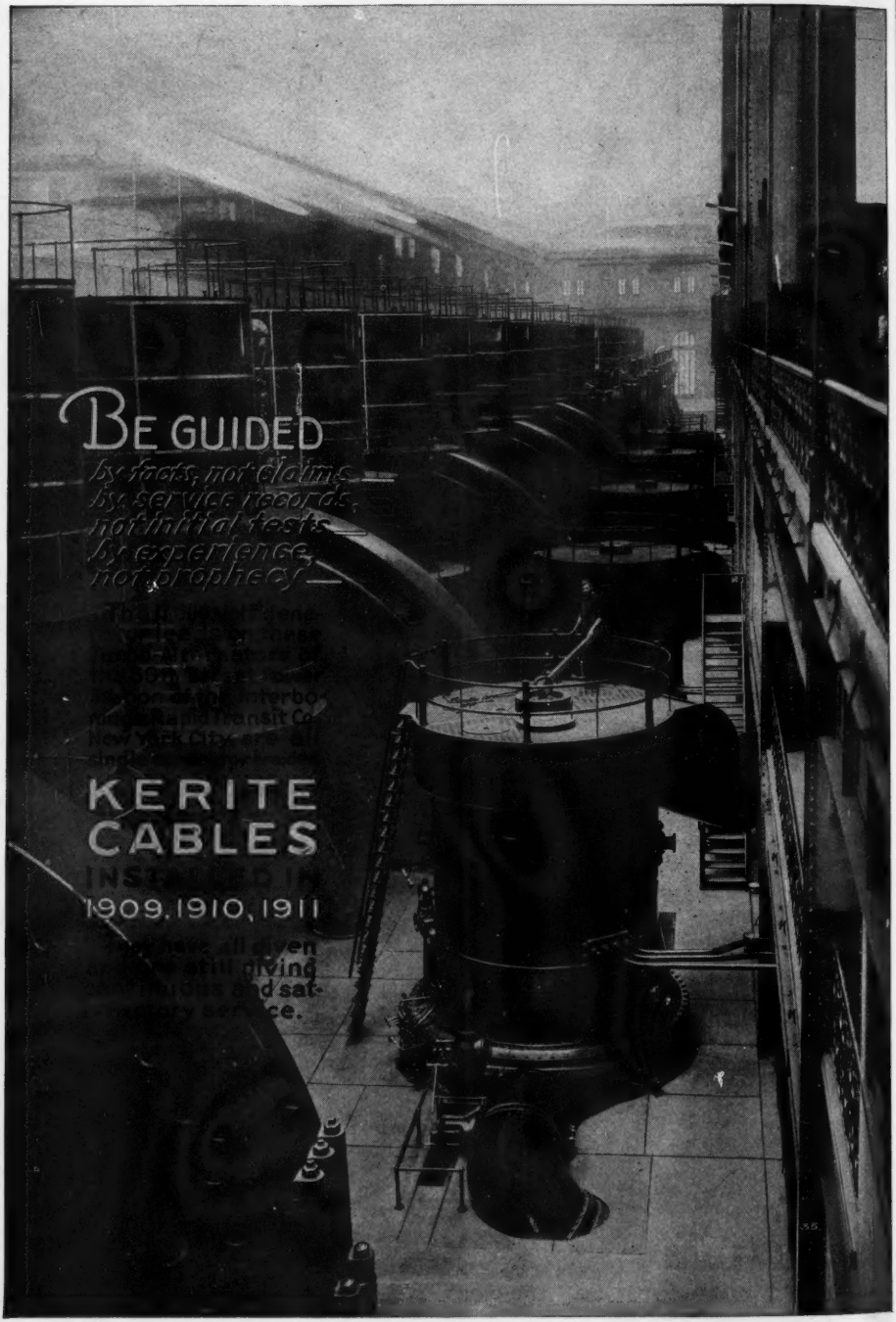
Our business of measuring heat for American cookery through the manufacture of Robertshaw Thermostats stands us in good stead these days. For now we are "measuring heat" for an Axis dish — we are making aircraft and anti-aircraft boosters and shells, shells for anti-tank guns, fuses for hand grenades and primers and ignition cartridges for rockets. Our precision experience in the manufacture of Robertshaw Thermostats helps us, too, in the manufacture of airplane instruments. The Robertshaw Thermostats we do make are used entirely in connection with Government projects. And these serve a future as well as a present purpose for they keep our research department and engineering division working toward new models which will be ready to measure heat for American cookery when peace is here again.

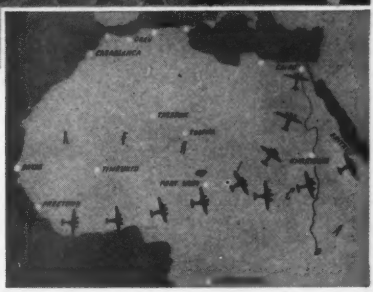
For High Achievement in the production of war equipment.

ARMY E NAVY

ROBERTSHAW

ROBERTSHAW THERMOSTAT CO., YOUNGWOOD, PA.





SKYWAY TO THE BATTLE FRONTS!

International Diesel Power serves Pan American across Africa

"PLENTY AND ON TIME!" With breath-taking speed Pan American Airways built the now-famous South Atlantic and African aerial life line for the Air Transport Command. Aboard the Clippers speeding out from U. S. terminals are ever-mounting loads of war-vital men and materials for the fighting fronts overseas.

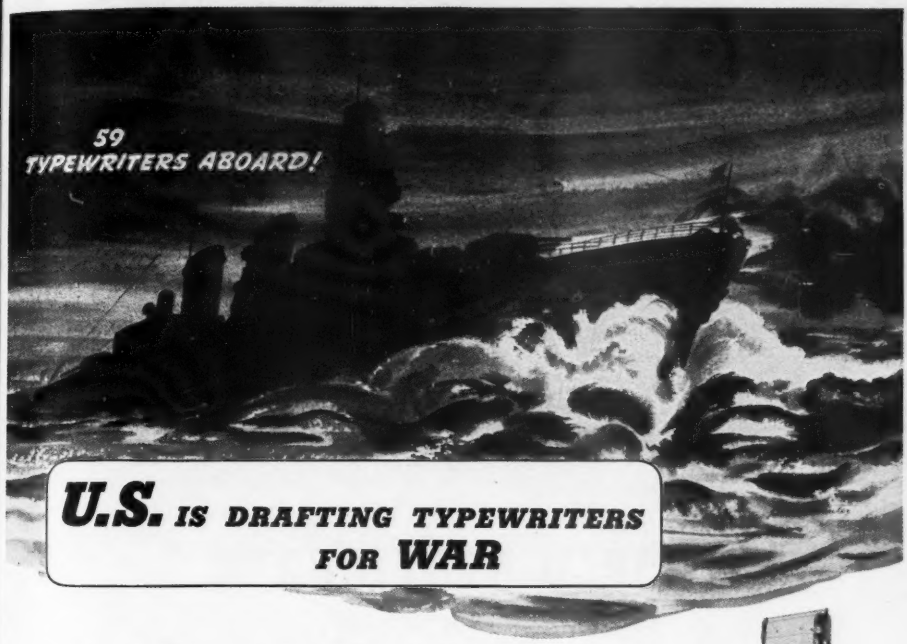
The forging of this chain of aerial bases to complete the routes across nearly 18,000 miles of land and sea will stand forever as an inspiring chapter in aviation history. *Here is a route destined to play hob with the Axis!*

Harvester is proud of the part played by International Diesel Power Units on this route. On many another life line in the war. International Crawler Tractors, Power Units, and Motor Trucks speed the way to battle. Like all Harvester products, today they are *dedicated to Victory.*

Says an Executive of Pan American: "One might call the International Power Units the 'hearts' of our stations in Africa. We depend on the power from these plants for the lighting of buildings, shops and airports; the operation of pumps for the water supply systems; refrigeration of meats and other food supplies; electric ranges for cooking; ventilating fans; air conditioning units; laundry machinery; shop tools and equipment; the heating of water, and other miscellaneous uses."

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue Chicago, Illinois

INTERNATIONAL HARVESTER



U.S. IS DRAFTING TYPEWRITERS FOR WAR

INDUSTRY DRAFTS *Egry Business Systems* TO HELP REPLACE THEM

EGRY SPEED-FEED, with Continuous Forms, doubles the output of the operator. Costs only 3c a day for one year.

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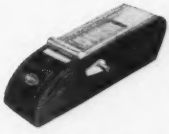
Egry maintains sales agencies in principal cities.



EGRY TRU-PAK Register speeds the making of all handwritten records. Assures control over all transactions.

EGRY ALLSET Forms step up the writing of typed and handwritten records by eliminating time-consuming operations.

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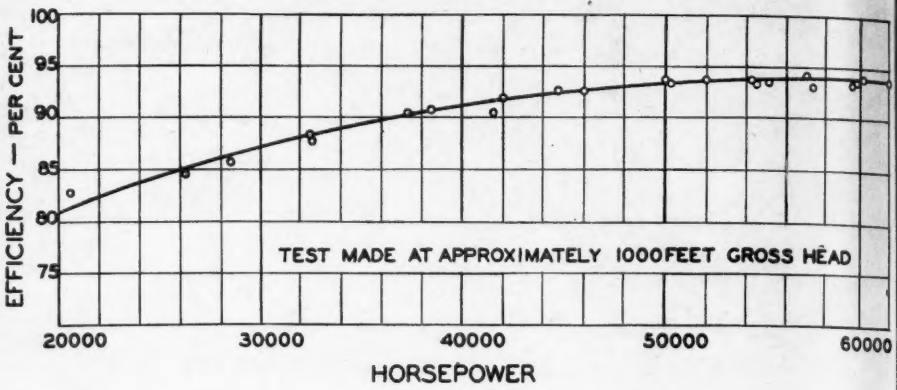

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60,000 H.P.—925′ NET HEAD—450 R.P.M.

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Built by

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(Hydraulic Turbine Division)

Newport News, Virginia

Our facilities for building turbines, valves, rack rakes, gates, etc., are now in use for constructing ships for the Navy.

Good turbine running mates for boiler-feed pumps!

When the heat balance calls for steam drives for boiler-feed pumps, you'll want to look into Elliott variable-speed, multi-stage, high-efficiency turbines, such as illustrated below.

For many years Elliott Company has specialized in turbines of the size range required by modern central station auxiliaries — running to several thousand horsepower. Elliott engineers are glad to share their background of sound experience in this field with you in the discussion of details of turbines which will fit your auxiliary drive requirements. Write us.

ELLIOTT COMPANY

Steam Turbine Dept., **JEANNETTE, PA.**

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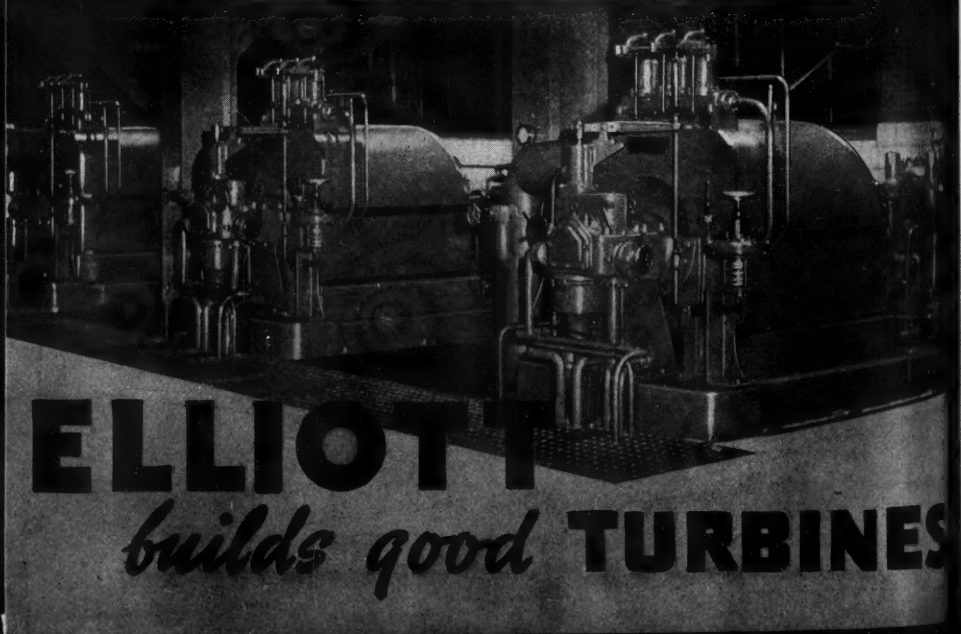


Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

FEBRUARY

4	Th	¶ *American Society of Testing Materials will hold spring meeting, Buffalo, N. Y., Mar. 1–6, 1943.*
5	F	¶ *American Gas Association will hold industrial and commercial gas conference, Detroit, Mich., Mar. 11, 12, 1943.*
6	Sa	¶ *Nebraska Telephone Association will hold session, Lincoln, Neb., Apr. 6, 7, 1943.*
7	S	¶ *American Water Works Association, Canadian Section, will hold convention, Hamilton, Ont., Can., Apr. 7–9, 1943.*
8	M	¶ *Edison Electric Institute, Accident Prevention Committee, starts session, Cincinnati, Ohio, 1943.*
9	Tu	¶ *Midwest Power Conference will be held, Chicago, Ill., Apr. 9, 10, 1943.*
10	W	¶ *American Management Association starts personnel conference, Chicago, Ill., 1943.*
11	Th	¶ *Edison Electric Institute, Transmission and Distribution Committee, opens meeting, 1943.*
12	F	¶ *Iowa Independent Telephone Association will hold meeting, Des Moines, Iowa, Apr. 13–15, 1943.*
13	Sa	¶ *Illinois Telephone Association will convene, Chicago, Ill., Apr. 20, 21, 1943.*
14	S	¶ *United States Independent Telephone Association will hold executives' spring conference, Chicago, Ill., Apr. 22, 23, 1943.*
15	M	¶ *American Institute of Mining and Metallurgical Engineers starts annual meeting, New York, N. Y., 1943.*
16	Tu	¶ *Missouri Association of Public Utilities will hold annual meeting, Excelsior Springs, Mo., Apr. 23, 24, 1943.*
17	W	¶ *Association of Highway Officials of North Atlantic States starts highway problems conference, New York, N. Y., 1943.*

Harold M. Lambert

Winter Traffic

Public Utilities

FORTNIGHTLY

VOL. XXXI; NO. 3 FEBRUARY 4, 1943

Government Handouts to Publicly Owned Utility Plants

The author believes that tax exemptions and other discriminations in favor of government projects at the expense of the taxpayers should be carefully weighed in comparing operating results with those of the private companies. Do the public plants really pay their way?

BY T. N. SANDIFER

WHEN, under the stimulus of free-flowing funds from Washington, public power expanded at an unprecedented rate during the depression years in wide regional pools, one of the most cogent arguments against such expansion was the loss in state and other local revenues represented in the displacement of the private utilities in their respective localities.

That the argument held considerable force for the communities involved is evident in the efforts made by public power authorities from time to time to refute it. Such efforts take the form of a comparison of revenues paid into state and county treasuries by the public power development, with those previously received from the private systems which had once operated in the same area. Especial stress is laid on "free services" to the community.

Thus, in recent months, there has come from the mimeographs of the TVA such statements as this:

The Tennessee Valley Authority during the year ended June 30, 1942, paid to 6 states and 113 counties a total of $1,859,416 in lieu of taxes as required by the amendment to the TVA Act made in 1940. Also for the same period taxes and tax equivalents provided by municipalities and coöperatives distributing TVA power were about $1,850,000.

The combined payments, totaling $3,709,416, exceeded by about $988,000 the property taxes of $2,721,000 formerly paid on power production and distribution properties when they were in private ownership.*

Against this excess claimed in behalf of TVA, the same report showed that state and local business taxes, such as income, franchise, gross receipts, hydro-generation, gasoline, and other motor vehicle levies applicable to the properties under private ownership have been estimated at about $750,000; even with this as an offset, the balance appears in favor of TVA.

At yet an earlier date, in 1939, the Federal Power Commission is found reporting as follows:

On the basis of totals for the United States, publicly owned utilities paid 17.3 per cent and privately owned utilities paid 13.2 per cent of their gross revenues in the form of taxes and net cash contributions during the year 1936.

As if to emphasize the point, the report for that year further stated:

Measured by "base revenues," which is a more accurate index, publicly owned utilities are found to have paid 18 per cent of their base revenues in taxes and net cash contributions during the same year, as against 14.4 per cent for privately owned utilities.

THE FPC bolsters the case for public power in this respect still further; "free services" rendered by these systems in 1936 had a value, on the basis of rates charged by privately owned utilities in the same states, equal to 8.5 per cent of their gross revenues, and 8.8 per cent of their base revenues. This compares with the same benefits conferred by private utilities which the FPC placed at 0.0024 per cent of gross revenues.

Such figures leave with the lay reader only one impression, and this impression is not likely to be very favorable to the private utility. Not to go further into the proposition, however, would be to do less than justice not only to the private utility, but to anyone who should later have to vote on the issue of public or private ownership of municipal or other community utilities.

The same FPC report which advanced such strong claims for public power returns in 1936, for instance, took cognizance of the fact that in 14 states municipal plants failed to pay any taxes; and where they did pay, such tax payments represented only 1.2 per cent of revenues, as compared with private companies' payments representing 14.4 per cent of revenues.

Coming down to present times and conditions certain power developments under public administration deserve study. The United States government put some $60,000,000 into construction of public power plants in Nebraska, inclusive of both a Federal donation and a balance which was loaned on very generous terms. Thus the plants were started without the usual necessity, as in the case of private utilities, to find the money — in other words, the plants started with virtual elimination of the capital problem.

This is an important item to remember, because private utilities must at least earn a fair interest return on the funds invested with them. Otherwise they couldn't get the money. This

*The statement does not indicate what a private operator would have to pay at now prevailing tax rates on the greatly expanded plant and operations which TVA now controls under the impetus of war work.—EDITOR'S NOTE.

phase has cogent implications at present when private utilities are faced with abnormal tax burdens and the need of providing new equipment simultaneously.

THE Nebraska plants, however, were under no such handicap, and the physical properties themselves reflected this financial ease. They are expansive, handsomely equipped and furnished, staffed with high-salaried public officials, according to description, and the easy-come, easy-go atmosphere was naturally reflected in their rates, which were very low. That is one of the principal arguments for public ownership-low rates. Why not?

Unfortunately for the Nebraska projects there was a hitch in the smooth flow of public power operation. A Nebraska judge, J. L. Tewell, of North Platte, inconsiderately ruled that hydroelectric plants are not exempt from state and county taxes; that the districts are not governmental subdivisions, and therefore equally liable with private corporations to taxes. This, in the case of the Nebraska plants, tumbled the whole public-ownership structure down around its advocates.

The manager of the Platte Valley Public Power and Irrigation District promptly protested that if this decision is upheld it will undoubtedly mean that the Federal government will have to take the projects under its wing, because they cannot pay state and county taxes and meet other obligations at the same time. This, it will be noted, is something that private ownership is doing every day, and making no great feat of the accomplishment. It is a trick that has to be learned, however.

THERE is thus a tendency to be noticed in government outgivings on the matter to feature some public ownership show-piece such as the TVA. Not too much is said about the following provision, as an instance, in the Columbia Power Authority Act, under which, if the bill finally passes, would come Bonneville and Grand Coulee, in the northwest part of the country.

Referring to certain payments to be made "in lieu of taxes," the bill continues:

> The authority, its property, franchises, and income are hereby expressly exempted from taxation in any manner or form by any state, county, municipality, or any division or subdivision or district thereof.

Payments "in lieu of taxes" are to be 5 per cent per fiscal year of gross proceeds from sale of power and water. This percentage is to be apportioned among the various states affected, on a

¶ "ALL *power is in demand now for war purposes. TVA . . . is in the heart of the war production area. What its story, or the fate of other public power projects, may be in leaner years is unpredictable. Again, this might be said also of private utility enterprise. But the latter is usually organized and launched in areas where the demand is steady—that is the difference between venturing private money and public; results have to be fairly certain in the case of people's savings if used as investment.*"

basis of the proportion of such public power properties in their areas, in relation to the total held by the authority.

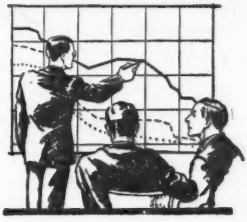
These payments, it need scarcely be added, are thus limited to a percentage fixed by national law, and regardless of how small are to take the place of taxes and other returns now being received from private utilities in such areas, which would be displaced as going concerns by the new public venture. The proposition could as well be stated also, "no matter how large" such returns may be, but there is a catch here.

ALL power is in demand now for war purposes. TVA, for example, is in the heart of the war production area. What its story, or the fate of other public power projects, may be in leaner years is unpredictable. Again, this might be said also of private utility enterprise. But the latter is usually organized and launched in areas where the demand is steady—that is the difference between venturing private money and public; results have to be fairly certain in the case of people's savings if used as investment. Expended as accumulated tax payments, the responsibility is not so pressing.

It was brought out during hearings on the Columbia river public power act, before a Senate committee, that the city of Tacoma, Washington, owning its own system, pays in about 10 per cent of its gross revenues as equivalent to taxes. This figure was given by the head of a private power company and was challenged by a public power Senator, who objected that the figure did not represent the term "taxes" as construed by the Federal Power Commission to mean "taxes paid, cash donations to city funds, and free service rendered."

Apart from this instance, in the absence of a fuller explanation as to how figures on so-called contributions in lieu of taxes by publicly owned utilities have been assembled, the conclusions are at least open to question. Obviously—even a Federal agency cannot simply send a blanket questionnaire to publicly owned utilities all over the United States asking them about such contributions and thereupon proceed to base conclusions on the results of such questionnaire. It would have to be shown that some independent appraisal of the alleged "value" of free services or other contributions in lieu of taxes had been attempted. It would have to be shown that offsetting factors, such as free service or partial contributions moving in the other direction—mainly from the municipal government to the municipal utility—had been considered and given corresponding weight.

IN other words, if a municipal plant has free use of the services of a city attorney, city engineer, city real estate, automotive equipment, or other city facilities, there is an offsetting factor to be considered. And, finally, it would have to be shown that there was a uniformity of comparison between publicly owned plant contribution and the various taxes paid by privately owned utilities; and that all taxes paid by privately owned utilities, Federal, state, and local (such as corporate income tax), had been given due consideration. An examination of the FPC study of 1936 (which for some reason or other has never been brought up to date) does not, on the basis of available in-



Higher Rates for Publicly Owned Utilities

". . . if a publicly owned utility decides to have higher rates in order to amortize its investment, or for any other reason cogent to its public managers, it can do so. It doesn't really need to, because the public till is usually available, but it has the freedom to charge a paying return. Not so the private concern—it must confine itself to merely earning a reasonable return on its investment, plus operating expenses. It is under state or municipal regulation and, now, Federal as well, in effect."

formation contained in the publication, remove the above doubts and questions.

TVA sponsors have made considerable play on the financial success of that undertaking, the rapidity with which it is paying off, the large surplus accumulated, the impressive percentage of returns on the "investment." But as a hard-bitten utility executive pointed out with respect to his own company, "If we had back the $28,000,000 that our company has paid in taxes in the fifty-two years it has operated, it would have amortized all the bonds and gone a long ways toward amortizing all the preferred stock."

Another matter — if a publicly owned utility decides to have higher rates in order to amortize its investment, or for any other reason cogent to its public managers, it can do so. It doesn't really need to, because the public till is usually available, but it has the freedom to charge a paying return. Not so the private concern — it must confine itself to merely earning a reasonable return on its investment, plus operating expenses. It is under state or municipal regulation and, now, Federal as well, in effect.

COMPARISON sometimes is attempted, also, between a public venture that services only a limited close-in area, and a private system that is furnishing a good central system over as much as 200 miles. Being a private undertaking it cannot just favor a particular locality, but it must charge the farthest customer a level rate with the one close in. Some 20,000 settlements of less than 250 people each get private power that probably would not otherwise be available.

There are various interpretations,

also, as to the value of services or donations from a publicly owned system to the community, which are so frequently lumped in as cash payments. A private company might include in its street-lighting charge, for example, a fraction to cover investment, replacement of globes, equipment, etc., while a public system might not. Somebody has to pay for such equipment, however, and it should be obvious that if it is not on the bill, it is still to be paid, somehow.

However such contributions are figured, private power spokesmen resent, as much as anything else, lumping them in with tax payments. Contributions are not fixed; periodical payments and taxes are. Contributions made when, as, and if funds are available, it is emphasized, bear no comparison with taxes, which are inexorable. They should instead, it is argued, be compared with dividends paid by private companies, and on this ground the comparison might not prove so favorable to the publicly owned plant—municipal plants generally are not good dividend payers.

ON the score of comparative rate reductions, the fact is that there has been a long-range downward trend of private electric utility rates, and this has continued despite an upward spiral of costs, of which taxes are an important part. If, in 1941, publicly owned plants had paid Federal taxes in proportion to their capacity and output, as private concerns were forced to do, their Federal tax bill—not "contributions" but cash paid in—would have been more than $50,000,000, it has been estimated. And this would have to be paid in each year, regardless of earnings. That is the way private companies pay.

Private power consumers have in fact carried an increasing burden of taxation which is not the case of the beneficiary of public power. A superficial comment on that would be, "Then become a beneficiary."

The difficulty there is that somebody still has to pay—make up the difference between the cost of such service and the return. This payment comes from all the taxpayers, including those who pay the increased taxes on private utility systems.

In the case of a community served by a public project which has replaced a private company the difference is more than just one of cost and return on the utility itself. The community, in many instances, is deprived of a regular tax return and, in place of it, gets only voluntary "contribution" or a bookkeeping benefit for some free service or another, that may or may not be worth the value placed upon it.

THE question will come to the front now more than ever, under prospective emergency regulation of utility rates. Few will argue that public ownership undertakings are under anything remotely comparable to the tax burden already imposed on private utilities. Under present rulings, the utilities may not seek relief in higher rates, but must meet increased operation costs arising from emergency demands, higher equipment prices, and other factors, and pay abnormally high taxes on current returns. The public ownership project pays no such taxes, hence it is to be expected that its record of "accumulated melons" and other claimed achievements will show better

than ever against similar records for the private companies. It is a comparison between the thick flanks of the plow horse and the slicked-up stall occupant that eats the resulting oats.

In the case of TVA itself, the blue-ribbon exhibit of public power advocates, it is possible to furnish a somewhat different picture from the one painted in its own financial statements. Its gross revenue is reported as $45,000,000 for the 1942 fiscal year. In contrast to its reported $3,660,000 paid that year by its various units in state and local taxes, and its nonpayment of any Federal tax, Pacific Gas and Electric Company, San Francisco, paid Federal taxes alone of nearly $12,000,000 on gross electric revenue of about $85,000,000. In the same period this private utility also paid about $9,000,000 in state and local taxes, or a total of around $21,000,000 compared to TVA's payment. This figures 24 per cent of the private company's gross revenue, compared with TVA's claimed payments representing 8 per cent.

CONSIDERING that the rapid expansion of such nontaxable public undertakings has not only cost many thousands of millions of public funds, but has shut out a comparable number of private, tax-paying enterprises, it would seem that the Conference of Mayors has all unwittingly "got something."

A curious sidelight on the whole issue is a recent protest by the U. S. Conference of Mayors against what was termed the Federal government's policy of building "tax exempt" plants for private industry. This refers probably to war plants which the government felt impelled to construct. Nevertheless, the conference, through its spokesman, Mayor LaGuardia of New York, held that this program denies to local governments a rightful source of revenue and thereby multiplies their financial problems.

An impartial question might be "Where is the line to be drawn, in this respect, between such plants and those of public power projects?"

If one such private tax-exempt plant is a loss to the municipality or state treasury, what about municipal power and light incursions? Would the mayors feel the same about these?

Note this attack by the New York mayor:

> There is not a city that is not on thin ice financially. . . . The government builds a plant; it is government-owned and, therefore, exempt. But it is unfair for the Federal government to collect its taxes, and then turn around and say to the municipal government, "this property is tax-exempt."

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It is more than unfair, the mayor continued; it is even "a little below the belt, to give Federal color to private enterprise to evade local taxes."

This is the same mayor who, several weeks ago, asked his city council to buy up a power plant on Staten island —a plant which would, presumably, be operated by the city on a tax-exempt basis.

THE question has already been raised in the recent congressional debate over the 1942 tax bill whether municipalities and other political subdivisions should be permitted to go on providing a sort of air-raid shelter for "slacker capital" bent on seeking to avoid its share of war taxes. Maybe if some of these funds were driven out into the open, the government could not only raise more tax revenues but also sell more bonds and put another brake on the inflationary "spending spiral."

But that is largely a war problem. The general question of taxing or not taxing publicly owned utilities goes beyond that. Let us, as a final consideration, take another glance at these so-called "voluntary contributions in lieu of taxes." Let us, to put it bluntly, look this gift horse in the mouth. How are these payments usually made and why?

The reason obviously is to check the complaints that might arise from the rest of the tax-paying community over the very fact of formal tax exemption. But the form is interesting. They are usually keyed to the gross receipts—a percentage of annual sales—or something like that. Such is the pattern set by the Federal government in the case of TVA.

Now it is obvious that this form of contribution is going to run high when general business conditions are good and sales are running heavy. During a depression, sales will fall off and the percentage of gross will thin down to a puny trickle.

NEXT consider this question: When does the government *need* money the most for purposes of social relief? That's right—during a depression when unemployment crowds the rolls of those seeking public aid. In such times the government will find that it cannot depend on such fair-weather contributions as the percentage of gross. It finds itself reduced to the collection of good old hidebound levied taxes, such as those paid by private utilities in good times and bad. Right now that war plants are snatching every speck of service the publicly owned plants can supply, the percentage of gross payments looks very generous. How about after the war?

If tax exemption of publicly owned plants is essentially such a myth, why do their champions oppose every effort to remove it? If they are actually paying more money over to the government than private utilities, one would think they would be glad to get a little more credit for their record and welcome a chance to pay out less and have it regularly registered as taxes. But such is not the case. Former Senator Norris, a friend of public ownership, was "shocked" by Judge Tewell's decision in his own state of Nebraska. Doesn't it all sound a little like the old-time indignation of store clerks against the introduction of cash registers?

"It's just the *principle* of the thing," was about the way they used to put it.

Wanted: A Bright Young Octopus

Need and suggested plans for consolidation of American communication companies discussed but, says the author, so far as tangible results at this moment may be found, the problem is like the weather. Nobody's doing anything about it.

By HERBERT COREY

If you are in Vancouver and wish to send a cable to your soldier son in Australia it will cost you $3 for ten words. Thirty cents a word. The all-empire rate. From anywhere in the British empire, commonwealth, and dominions to any other point is the same.

Good, smart, British-made business.

If you are in San Francisco and wish to send a cable to the same son in Australia it will cost you $5.90. At the rate of 59 cents a word. The difference of $2.29 in the cost of the two messages is not to be accounted for on the score of distance.

So there is something wrong.

Before putting on the martyr robe, let it be admitted that there is something wrong. There's an octopus in the house. This time, however, it is not an American octopus, but a wholly foreign-born, hard-boiled, money-hungry, realistic octopus which gives us full credit for all our good points but does not hesitate to take the gold fillings out of our teeth in the way of business. In peace time the octopus covers the continent of Europe as well as the British Isles. It will do so again as soon as the war is over. Everyone interested in the problem on this side of the water would like to see the Americans get at least an even break. No doubt we'd like a shade the best of it if that were possible. We know what should be done and how to do it. We do not know when it will be done. The 77th and preceding Congresses have had this trouble with international communications on their calendars. The 78th Congress will have it. A bill on the subject came within an inch of enactment at the last session.

But this must be said about the American Congress. No doubt it is all that its most candid friends have said of it. But now and then it acts with precision and speed. The national administration, the Army and Navy, all the American wire and radio and cable companies concerned, seem to be agreed on all the principles and on everything but the plan. Let us examine the facts.

THERE are ten main American companies in the field of international communications. They compete with each other. They have their stations and their broadcasting equipment on this side of the water. They have cables across the seas. Some of the cables are pretty old now, and if other cables are laid they will be infinitely more serviceable. Then, there is the technical question of whether some cables ought to be renewed at all, in view of radio art. One new telephone cable is in contemplation that might carry 240 complete circuits.

Radio is being immensely improved. Static still interferes and there are times when radio signals fade out completely and the air is pretty well crowded and will continue to be crowded until some of the technical processes are improved. Yet, on the whole, American overseas communication is certainly as efficient as that of any other nation and probably better than any one. But Americans are hampered by one unpleasant fact.

Wherever they attempt to deliver their messages overseas they are in hostile territory. During the present war that is not the fact, of course, for all overseas communication is controlled by the allied military authorities and for the common benefit of all. But in peace time all the overseas communications organizations are against all Americans. The extent of the antagonism differs, of course. It is not based on political—or only to a certain extent on political—or racial or religious or ideological differences. It is soundly founded on the good old dollar, franc, mark, lira, and rouble. The aim is to make money. One way to make money is to take all the traffic will bear from the other fellow. Like enough we would do the same if the cases were reversed. Human nature seems to operate in about the same fashion under any flag in times of peace.

THE American companies each play a lone hand. What with our laws and the regulations of the Federal Communications Commission and of the regulatory authorities of the various states, and with Thurman Arnold and his predecessors hiding behind Sherman Act trees and sharpening knives, they have been compelled to play it alone. Add to that list of causes the fact that in the past each American company has been suspected of a willingness to take a scalp itself in the line of business. It has been swell individualism and free competition at every hole in the course. The trouble has been that the rules were made on the other side of the water. Sometimes they have been altered during the game.

Every European communications company is either owned outright or directly controlled and protected by a European government. Rates are divided — not evenly shared — between the sending and the receiving company.

The European receiver can fix the rates to suit itself up to a point at which the American company refuses to play.

An American cable could have been laid right through to Australia, for example. (This is to be taken merely as an illustration and not as an attempt to potshot at international comity.) If that cable had been laid and a receiving station built at an Australian port, all would have been well from our point of view. But if—this is still to be considered only as an illustration—permission to land a cable-end and tie in to a receiving station in Australia were refused, then American messages to Australia must be routed around Robin Hood's barn, including the outbuildings. Wherever that message passed through a foreign-owned relay point a little bite could be taken at the payment made at the American point of origin.

IF a protest is made the lone American company sooner or later finds itself nose to nose with a foreign government which asks how it gets that way. Our State Department is willing to do anything possible to help business interests. But if it got too haughty with a foreign government it would hear people muttering about "dollar diplomacy." That is the kind of diplomacy all the foreign governments play and play close to their pearl studs. But there would be bound to be questions asked in Congress and by whatever so-called liberal writer has succeeded to the late Heywood Broun's there-are-no-good-Americans point of view. In our earnest desire to be a Good Neighbor at any cost to the taxpayer the State Department would find itself disavowed and trampled on.

So some other way must be found to give the American companies at least a chance to palm as many aces as the other fellow. If we do not do it, we will have our pants stripped off and used as pennants when peace comes again.

The way, the obvious way, agreed to by the politically minded administration, by every government department concerned, by the ten American companies, and by everyone else interested, is through the amalgamation of the ten American companies into one or two or three organizations. That statement should be modified in the interest of exactness. The professional labor leaders and Mr. Marcantonio, the socialist member from New York, will not agree to anything unless the pockets of labor are considered. This will be

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done when the amalgamations are completed, no doubt to the satisfaction of almost everyone, and the protests of labor are not apt to interfere with the prospective amalgamees.

AUSTRALIA wants this or these combinations made, for Australia is tired of being at the mercy of a British cable and radio monopoly. When "Bob" Casey was in Washington as the minister from Australia he labored mightily on behalf of such a release. His activities might have had something to do with his sudden shift to Cairo and futile honor. The two great Canadian telegraph companies favor the combination. No one seems to be against it—or them—at this moment, for even the British Cable & Wireless Company has moderated its opposition, the French have no voice in it anyhow, nor have the Germans, the Italians, or the Japanese.

When one comes to think of it, too, it is rather absurd that this country, the financial prop, sustenance, and stay of our side of the world at this time, on better terms with Latin America than ever before in history, the buyer of every luxury article the lathe and kick-wheel artisans of the Other World can produce, the maker and seller of innumerable things that Other World needs and cannot make, should have its communications in times of peace supervised and skinned and levied on. There will hardly be any denial that in times of peace there's many a leak from American cables to foreign governments and businessmen. Other governments and their businessmen have been informed of important facts in many an American industrial maneuver.

THERE has been no way by which the American companies could protect themselves. A company cannot buck a government. A company might win its point in its complaint that it felt the gimmick in its business at the Port of the Heavenly Body Odors. The complaint would be admitted, apologized for, and corrected. Then:

"We regret to inform you that your installation at the city of Sweet Mackerel has been declared a fire hazard and must be torn down at once on pain of hell to pay."

Likewise, the individual companies find themselves exposed to odd rulings by our own FCC. Do not misunderstand me. The FCC is, I am sure, acting in accordance with its understanding of the law. It may be that, as has been charged, the FCC is operating under a law that takes in too much territory and it may be that the FCC has stretched the law for itself to take in the territory it is hungry for.

These questions are not being raised. But the fact is that on one occasion an American company which was firmly established in Sweden encountered the threat of competition from another American company. The Swedish government took an unexceptionable position. It said, in effect, that if the second company wanted to come ashore it might do so. But under the law this enterprise on the part of the second American company was required to get the approval of the FCC. In the due course of time it did not get that approval and that was that.

THE FCC's reasons were no doubt irreproachable and in any case will not be examined here. It is obvious, however, that if there were one

Improvement in Radio

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great American company, of the sort that former Senator George W. Norris used to call an octopus, nothing of that sort could happen.

It is evident that we must have a bright young octopus of our own to fight this Old World octopus.

The ten American companies operating in the international field are those which operate cables and those which do business with radio, and certain hybrids amongst them which have both cables and radio. The cable companies are Western Union, All America Cables, and the Commercial Cable Company. Western Union and All America are the most important. Radiotelegraph includes Globe Wireless, the two Mackay companies, Press Wireless, RCA Communications, Inc., and Tropical Telegraph Company. Of this group RCA is the largest. Both radio and cable companies handle telephone as well as message business. During the war the radio companies are not permitted to handle any domestic business because of the lack of privacy involved in the use of radio and all outgoing messages are censored as a matter of course. Both radio and cable companies suffer to some extent from the increasing efficiency of their rivals and to the growing employment of air mail.

It would be pleasant to say definitely what will be done to protect the interests of the ten American companies but it is not feasible. No one knows what will come out of the legislative mill in 1943 and thereafter. The rough outlines of what may be the final plan are beginning to show through the haze, however.

COMPANIES doing a strictly domestic business will then be placed in one category and the international companies will be set in another. So far as is practicable the radio and the cables will be separated also. It may be

that some concessions will be made to permit certain international companies to carry on a hybrid business. The International Telephone and Telegraph, for example, is compelled to use both forms of communication in its almost world-wide net. The greater part of its business is done in foreign lands and yet it is an American company. This seems to project a very serious problem. The IT&T is obliged to preserve the most friendly and coöperative relations with the governments of the many countries in which it does business.

These interests might at times be in conflict with the interests of an all-American amalgamation. Yet it is the desire of those who have been working on the plan—so far as can be ascertained—to include the IT&T. It is presumed that the IT&T wishes to be included. But the part to be played by the government of the United States must first be determined.

The plan—which is at present an aspiration rather than a project — is for the creation of holding companies. One such company would take in all the international companies and the other all the domestic companies. The international holding company would compart its radio, wire, and cable elements. Unity of action if and when required could be secured by the imposition of a third holding company—a superholder, on the lines of the great holding companies which the SEC has been so bitterly attacking. This top holding company could reconcile disputes between the various elements and enforce discipline.

INASMUCH as this seems to emanate from government sources it is a striking testimony to the excellence of the methods which have enabled American business to make such extraordinary advances. Only technical obstacles seem to be interfering with the combination of the domestic lines of the Western Union and the Postal Telegraph. So far as can be ascertained by a study of the evidence and testimony both companies are as willing as Barkis ever was. The Postal has been operating at a loss for years, and is now $8,000,000 in debt to the Reconstruction Finance Corporation. The Western Union is in the black, but both companies admit that by eliminating competing offices and equipment enormous sums in construction and operating costs and overhead could be saved.

Each company has a traffic arrangement with one of the two great Canadian telegraph companies, which has been working very satisfactorily for years.

If a holding company were to take these companies over the traffic split could be continued to meet conditions just as American business has always been able to do when not hampered by governmental interference. The FCC has manifested a somewhat feebly supported desire to manage this division of American business with the two Canadian companies. It is admitted, however, that any serious effort by the FCC to interfere in the management of the affairs of Canadian companies would lead to friction—which is a mild word to use—with the Canadian government. The Canadians are the best Good Neighbors we have ever had. But—

"We are not Good Push-overs," said a Canadian.

THE task of setting up the two and perhaps three holding companies would be an immensely complicated one. Nothing, so far as can now be foreseen, could be ordered done by governmental authority. No one of the ten companies could be forced to enter the combination. If and when the ten companies come to the FCC with a plan of unification—and such a plan must be submitted to the commission—any one of the ten companies could withdraw at any time and no power exists to prevent such a withdrawal. In the preliminary negotiations the parties are far apart. Properties must be appraised, the interests of employees safeguarded, and stockholders protected. The most feasible plan now under consideration seems to be for the outright purchase of all the properties of all the companies for cash. Stock might and probably would be issued in lieu of spot cash to an as-yet-not-even-guessed-at proportion. The money needed for the over-all transaction might be furnished by private capital or by the government or by a combination of the two.

There is the worm in the chestnut. Every one of the private interests involved is afraid that out of such a plan government ownership might come eventually. Those in the government who have been studying the situation are reported as opposed to any government ownership plan. They are not theorists or dreamers, and they are fully aware of the extent and vigor of the opposition which would develop in Congress to government ownership, in view of the antagonism aroused by the bureaucratic régime now engaged with the war production effort. The lesson of Leon Henderson's fall has not been lost on these men, and they have a vivid recollection of the failure of government management of railroads during the first World War.

BUT there are men high in government circles — Vice President Wallace, for example — who talk of world-wide TVA's and share-the-crop-with-Anatolia plans and global airlines and educational programs. The prospect of government control of the means of international communication has been positively intoxicating to this group. As a means of fighting the war the Board of Economic Warfare has done a good job on clearing out some of the Nazi-controlled radio stations in Latin America. The board, under the hard-fisted management of Milo Perkins, who has supplanted Wallace in the nonoratorical features of its operations, has accomplished some things which cannot now be discussed and the importance of which may never be known until victory has come. These things have whetted the appetites of the world-creators.

Before any part can be played by the

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government, either in outright ownership or in the exercise of control as a creditor with enough seats on the boards of the holding companies to safeguard government loans or investments, the attitude of the RFC must be considered. If Jesse Jones holds on as head of that lending organization he will unquestionably maintain that strictly bankerish attitude which has irritated some of the more enraged idealists.

It may be true, as charged, that Mr. Jones' insistence on getting his money's worth may have interfered with the accumulation of sadly needed stockpiles of critical materials. That is another story. It is certainly true that Mr. Jones is not on Vice President Wallace's beam in spending money for the betterment of the world. When Mr. Wallace gets that bright gleam in his eye Mr. Jones becomes practically inaudible. The only thing he can be understood to say is "no." Therefore, if the money for the amalgamation of our communication services is to be asked from the government through the RFC it would seem probable that Mr. Jones must be convinced that the scheme is pure business and based on the absolute need for protection from foreign aggression of those services. If a Save-the-Peon sorority is descried by him he will clump heavily away, shaking his head. But that is aside from the straight narrative. Whatever plans may be in present prospect they are straight business.

During the period immediately preceding the first World War, during that war, and while the post-war chaos continued, our international communications were at the mercy of our foreign friends and enemies. Our cables could have been cut wherever they had been pulled ashore and our radio channels jammed or our stations shut down. These things are still possible in war time. A more delicate and indirect control is manifested by our foreign friends and enemies in times of peace, as has been previously stated. It is this indirect but formidable interference with our freedom of world speech that has developed whatever there is of the present plan. Along with that is the necessity of protecting our communications companies financially.

An influential element in the companies insists that the time to amalgamate and consolidate is now, for when the war ends we will be back in the same old doldrums. All our individual companies will be exposed to attack from the European monopolies, and international politics will begin to play its part. It will be recalled that for years international politics kept our merchant fleet down to a flatboat minimum, and no one in government shipping circles is optimistic that the same attack will not be reopened when the war ends. We have more money to be had than any other country in the world. No one need marvel that the very tough-crusted businessmen across the seas will not come after it.

The Axis powers know all these things even better than we do. At a conference in Vienna some weeks ago a new postal and telegraphic union was formed, with Germany and Italy as the key partners and the dominated countries as dotted-line signers. If the Axis powers retain any part of their pirated power it may be taken for

granted that after the war we will face not merely the government-owned or controlled means of communication of the past, but an arrogant nazified combination which will use whatever means is necessary to obtain its ends. No one regards this as possible, for we are steps nearer victory now than we have been in months past. But there the Nazi plan is unfolded, right in our faces.

The 78th Congress and the private interests involved will have a job to do. Army and Navy were at one time hostile to any plan for amalgamating the American companies, fearing that the war-time communications might be interfered with. But it is now understood that the administration has favored the schemes broadly indicated in the foregoing, and the armed services are content to go along on condition that there shall be no loss in wartime effectiveness.

THE hopeful sign, apparently, is that the RFC has recently set up a United States Commercial Company, through which negotiations can be carried on for the protection of all our national interests during or after the war.

It is regarded as highly desirable that the Latin American interests be safeguarded as well as our own, and this can be done through the USCC. It is easily possible that in the future—no one will say how far in the future—there might be a western hemisphere combination, in which Canada and Australia would be invited to join along with the United States. This would offset the British Wire & Cable Company and whatever hasty pudding the Nazis may be able to throw together if they retain any fraction of economic autonomy on the European continent.

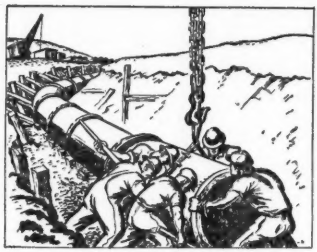
All that can be said at this time—in addition to what has been said here—is that no one opposes the need for American consolidations. Only the form and the mechanics and the bigness of the device seem to stand in the way now. Some such arrangement is so vitally necessary to our political protection, as well as to the companies involved, that a suggestion for a governmental subsidy has been heard in high quarters. But the truth is that so far as tangible results at this moment may be found, the problem is like the weather.

Nobody's doing anything about it.

Man-power Problem

"THE quickest way to increase man power is to increase man hours. We must increase the national working week to an average of not less than forty-eight hours. What counts even more directly than man hours as such is the total productivity of labor within those hours. We must end the feather-bed practices built up by unions, the made work, the unnecessary jobs. We must increase the efficiency of labor, management, and organization. These are some of the things we must do before resorting to compulsory labor service, with the tremendous problems that this presents."

—EDITORIAL STATEMENT.
The New York Times.



War-time Safety Operation of Public Utilities

They may be expected, declares this author, to be among the very first to reverse the present increasing accident trend, a guaranty of greater efficiency in the home front war effort.

By COLONEL JOHN STILWELL
VICE PRESIDENT, CONSOLIDATED EDISON COMPANY OF NEW YORK,
PRESIDENT, NATIONAL SAFETY COUNCIL

To the average American, safety is associated with the work of public utilities. Through daily contacts with the employees of the telephone, the transportation, the gas, and electric industries, the public has long expressed a complete confidence in their expert knowledge of their duties and their solemn regard for their own as well as the public's safety. This high regard was not developed overnight, but by diligent, painstaking effort on the part of utility management and its personnel.

For many years, at least a decade and a half, the accident experience of all industry has been on the decline. From 1926 to 1941, for example, all industry showed a drop of 67 per cent in frequency rate of injuries. But public utilities have shown the remarkable drop of 76 per cent (although many of its occupations, if handled less scientifically, would present far greater than ordinary hazards).

Between 1926 and 1941 the level of severity in all industry declined 52 per cent while in public utilities a decrease of 71 per cent was attained. This superiority was obtained despite the multiplicity of operations involved in the successful functioning of a utility property.

Needless to say this record has been achieved only through unremitting vigilance and technical foresight. In the last analysis it is a simple corollary of the principle of responsible service to the public, which, as our experience indicates, has been productive of satisfactory results.

Because of their position of leadership in the field of safety, and because there are fewer "public" utilities than "war" utilities, the gas and electric companies, the telephone and telegraph,

the natural gas, transportation, the water and heating companies are all directly affected by a great resurgence of the national safety movement currently gathering force.

THIS unprecedented application of safety technique to the American economy comes in answer to the need for closer control over the dwindling pool of strategically situated man power. The movement took shape among the utilities even before Pearl Harbor. As conversion picked up speed, business and industry became concerned over a grave upward trend in accident experience. General concern was summed up in a presidential proclamation deploring the "wastage of human and material resources" through accidental death and injury, and calling on the National Safety Council to bring to heel a menace depriving America of 500,000,000 man-days of labor a year at a cost of several billions of dollars.

The National Safety Council's normal budget runs around $1,000,000 annually, which is expended for services to its members. This sum was obviously inadequate to cope with the national safety problem on an emergency basis. Business and industry determined to intervene. Pearl Harbor sealed the decision. The War Production Fund to Conserve Manpower was formed with the object of providing $5,000,000 in voluntary contributions — deductible tax items — to implement the council's war-time assignment.

Some $1,500,000 has been received to date, of which $250,000 has been turned over to the council for its enlarged program. The fund has been working under the national chairmanship of William A. Irvin, former president of the U. S. Steel Corporation, himself a pioneer in industrial safety. Mr. Irvin is convinced that an accident experience which, since Pearl Harbor up to the end of November, has accounted for 46,300 on-and-off-the-job deaths among workers and 4,400,000 injuries cannot continue unchecked without becoming a serious obstacle to achieving maximum war production efficiency.

THE council, a 31-year-old organization with a staff of 150, operates under the direction of a board of trustees drawn from among the leaders of business and industry. Council technicians, under the guidance of an experienced executive committee, have already shifted the safety program into high gear in many key areas.

Plans for car pooling, for the staggering of working hours, and of traffic routing have been introduced by the council, with Army and local coöperation in such worker transportation bottlenecks as the Rock Island Arsenal, the Provo, Utah, the Decatur, Illinois, the Little Rock, Arkansas, the Mobile, Alabama, and other military-industrial centers.

On request of the Maritime Commission, an accident prevention system has been worked out for shipyards on the Atlantic, Gulf, and Pacific coasts. In this instance the council has detached men to work hand in hand with the Navy personnel.

The safety and security branch of the Provost General Marshal's office is now receiving council help in setting up and training safety personnel in all plants producing for the different arms

Cause and Number of Injuries

Cause	*Injuries*
Lack of, or inadequate use of, rubber gloves, sleeves, line hose and rubber blankets, guard rails, barriers, etc.	74
Unsafe method, such as working on an energized line which should have been deënergized	51
Defective equipment, such as worn rubber blankets, dull spurs, improper ground, short-circuited transformer, etc.	9
Unsafe design, layout, poor material	6
All other causes	5
No mechanical cause	9
Total cases	154

of the service. To this end men are being given instruction courses in New York and Chicago.

For the Labor Department and the United States Office of Education, the council has worked out safety courses and provided instructors to teach future industrial safety men. Similarly the council is teaching high-school boys proper driving methods against their early induction into the armed forces, or into industry on the home front.

MUCH effort is being devoted to promote safe winter driving. Today war workers are more frequently injured by accidents off the job than on the job—the ratio being 5 to 3—and among nonindustrial sources of hazard, unsafe driving ranks very high. This activity is linked with a stepped-up drive to reduce man-power losses through the elimination of grade-crossing accidents.

For all principal American cities evacuation routes have been mapped out to be used in case of aerial attack or local disaster. Traffic control in dimouts and blackouts is a brand new problem to which council traffic engineers are devoting their attention.

Over the radio, in the press and the magazines, the council is driving home to Americans the grim necessity of accident prevention. This task and the task of enlisting the technical coöperation of every public and private group or agency which, properly directed, can contribute something of value in reducing accidents, are perhaps the council's most important war-time obligations. Without a popular will to improve our accident experience, and unless the idea of saving man power

for war power is ingrained in the American consciousness, satisfactory improvements cannot be expected.

The utility industry, like all industry, have been affected by the war-time stress and strain and depletion of its ranks, and there has been a moderate rise in its accident frequency rate. Between 1940 and 1941, the frequency rose to 7 per cent while in all industry the rate of increase rose to 8 per cent. Only natural gas companies showed a decline. This trend upward, preliminary figures show, leveled off in the past year with some decline in spots, indicating adjustment to war pressures.

As in any industry, the larger companies have a decidedly better accident experience than the smaller ones, though in this past year the small companies did effect improvements. The most recent complete analysis reveals that telephone and telegraph companies have the lowest injury frequency rates, and natural gas companies the lowest severity rates. By far the biggest problem in the industry is the prevention of fatalities in electrical operations. One in 33 reportable injuries was a death during the past five years, in comparison with one in 132 for gas companies and one in 98 for American industry as a whole.

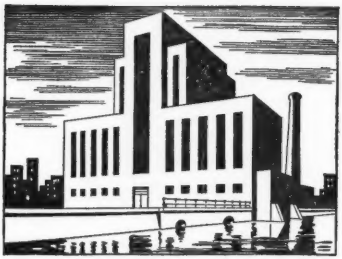
Of fatal accidents occurring in electric light and power company operations, 70 per cent are due to electric shock and burns. Looked at in the broader aspects, these accidents are relatively infrequent, but when they do happen they are almost invariably serious. Failure to use prescribed safeguards—rubber gloves, line hose, and rubber blankets — is at the root of one-half of these tragedies. A study of the causes of 154 electrical shock and burn accidents by the National Safety Council is outlined on page 154.

It is scarcely necessary to emphasize that the public utilities have an important mission in the success of a privately organized war-time safety movement. As pacemakers, they have reëmphasized definite safety responsibilities. They may be expected to be among the very first to reverse the present increasing accident trend, a guaranty of greater efficiency in the home front's war effort.

INJURY RATES AND SEVERITY OF INJURIES, BY INDUSTRIAL GROUPS

Industrial Group	*No. of Units*	*Frequency Rate* 1941 Rate	1940-41 Change	*Severity Rate* 1941 Rate	1940-41 Change	*Ratio of Lost Time Injuries, 1937-41, Resulting in—* Death	Permanent Partial Dis.	*Average Time Chg. per Case, 1937-41* Permanent Partial Dis.	Temporary Total Dis.
ALL GROUPS*	696	12.53	+ 7%	1.54	—11%	1 in 53	1 in 57	795	19
Gas and electric	49	9.15	+ 7%	1.71	—14%	1 in 33	1 in 41	1,080	22
Electrical	203	12.15	+ 7%	1.83	— 2%	1 in 40	1 in 61	883	21
Natural gas**	182	13.56	— 3%	.82	—28%	1 in 132	1 in 58	677	18
Manufactured gas**	240	14.23	+10%	1.05	—25%	1 in 132	1 in 47	429	15
Telephone and telegraph	20	5.12	— 6%	.83	+49%	1 in 61	1 in 303	1,200	33
Water	22	24.33	—10%	1.74	+11%	1 in 142	1 in 237	1,470	14
Heating	8	7.53	+57%	.14	—57%	.....	.....	....	..
Not otherwise classified	11	31.32	+34%	1.60	—69%	1 in 154	1 in 173	777	15

* Corrected for certain duplication of records in gas and electric and other operations.
** Source: Reports to American Gas Association and transmitted to National Safety Council.



The Same Old Challenge With a Great Opportunity

Reorganization of big nation-wide utility systems under the Holding Company Act brings more localized responsibility and also a golden chance, declares the author, to far-sighted and courageous managers.

By RALPH B. COONEY

EXCEPT in a few isolated instances, the last three years have produced little front-page news about the utility companies. Mars has been dictating the big black headlines, and those who would keep informed about conditions in the utility field have had to direct their attention to the financial sections or the business press.

Thus it is that the general public is not particularly aware of the changes that are taking place as a result of the once hotly contested Holding Company Act. The job of reorganizing the big nation-wide systems into local and regional companies has been—and is being—permitted to occur with a minimum of fanfare, editorial moralizing, and political whoop-la.

This withdrawal from the stage of public attention constitutes a real "break" for the utilities. Free from the spotlight—in which they performed none too adroitly—they have been able to attend to the revision of their affairs, undisturbed by catcalls and finger pointings. Utility executives have once again been able to go about the business of running utilities.

That this has been a good thing, not only for the utilities but for the nation as well, as evidenced by the way in which the power companies have met the tremendous demands imposed by war. Whatever sins it may have committed, this industry has, without question, developed a great corps of expert technicians who know how to deliver the goods. The very fact that the utility corporations have not been bombarded with the kind of adverse publicity tossed at other critical industries tells the story more effectively than could words of praise.

However, neither the comparative calm with which reorganizations are moving forward nor the success with which the industry is discharging its war-time obligations should lead to too roseate a view of the future of the privately owned utilities. So long as private corporations—large or small, efficient or otherwise—are permitted to operate in a necessarily monopolistic field, their right to exist is always going to be subject to challenge.

No thoughtful utility executive will ever permit this one essential consideration to be long absent from his mind. He must ever face the fact that, no matter how smoothly things seem to be running, no matter how efficient the service, no matter how completely safeguarded the public interest, this fundamental question can be raised.

Whether it will or not rests, now as always, not alone upon the degree of social responsibility felt by management, but, more importantly, perhaps, upon the degree of social responsibility publicly displayed by management.

Significant as they are, the changes taking place in the control of the nation's utilities brings no change in this basic situation. But they do bring an important shift in the alignment of the human factors involved.

With the break-up of the large systems into local or regional companies, the management on, or close to, the scene becomes the management of ultimate responsibility. Presidents in name become presidents in fact. Boards of directors have to row the boat of policy instead of merely clinging to the towline of some larger and more powerful craft.

Here is where the vital shift occurs. The full job of justifying the privately owned utility company's right to exist now falls upon local management. There is no longer a nebulous and far-distant "they" to be credited or blamed for what is said or done. The men with the titles of executive authority become the men whose words, whose attitudes, and whose actions determine what the public thinks of the utility business.

In most cases, these men will probably be the same individuals who have already been acting as operating utility executives. Whether they remain with the unit with which they have been associated or shift elsewhere, their experience is going to keep them in the picture, regardless of corporate readjustments.

It is to these men that these observations are addressed. For at their feet is being thrown the challenge from which the privately owned utility can never escape. And in their hands rests the opportunity to meet it victoriously. Real leadership—the kind of leadership that they have never before been in a position to display—becomes theirs for the taking.

Will they rise to the occasion? It is to be hoped they will. Seldom in modern economic history has so bright a chance offered itself to the far-sighted and courageous members of any profession.

Tremendous things are happening to our world—not only on the far-flung battlefields of global war—but here at home as well. Under the stress of conflict, the whole pattern of our social and economic life is undergoing changes staggering to the imagination.

Peaceful rural areas are becoming teeming industrial zones. Enormous masses of population have trekked back and forth across the land at the beckoning of war-time jobs. Millions of men have been uprooted from their established manner of living and brought in contact with new sights, new people, new experiences. It is a time of vast ferment. No one can predict exactly what will finally emerge—but it is safe to say that the world of tomorrow will be marked by critical changes.

IN all that is happening now—in all that will happen later—the utilities are, and will continue to be, inextricably involved. War found us just beginning to experience the full flowering of a utilities' civilization. The post-war world will find that civilization a dominant influence in human activity.

How we solve the problems of the post-war world will, therefore, be quite as much a matter of concern to utility executives as it will to statesmen. And the wisdom and energy utility men bring to the meeting of their problems will have a profound effect upon the well-being of society as a whole.

Under any circumstances, the break-up of the large systems would bring outstanding opportunities to the local operating men. But, with the world-shaking changes now in progress, these opportunities expand toward ever-widening horizons.

Not all men will rise to the occasion with equal effectiveness. But every man can prepare himself to approach this vital moment with understanding and determination.

This writer is neither wise enough nor the scope of these notes encyclopedic enough to make possible a presentation of all the things such preparation will entail. But it may not appear presumptuous to offer a few key generalizations.

FIRST in any such program must come recognition of the fact that independent executive authority means complete and uncushioned executive responsibility. To men who have been functioning within the framework of a larger organization such recognition may require somewhat greater readjustments than a first glance would indicate.

In the case of a public utility full responsibility has a much broader meaning than it does in the ordinary corporation. It not only means responsibility to the stockholders for the operation and standing of their company. It means responsibility for the very

¶ "WITH *the break-up of the large* [*utility*] *systems into local or regional companies, the management on, or close to, the scene becomes the management of ultimate responsibility. Presidents in name become presidents in fact. Boards of directors have to row the boat of policy instead of merely clinging to the towline of some larger and more powerful craft. Here is where the vital shift occurs. The full job of justifying the privately owned utility company's right to exist now falls upon local management.*"

existence of the utilities as a form of investment. It means responsibility for the reputation of the utilities industry as a whole. And it means an over-all responsibility to the public.

This is no small order, even for a definitely localized operation. The larger the territory, the more regional in character the service, the more difficult—and the more important—its proper fulfilment.

The policies under which operating men have been acting have been as varied as the names of the systems to whom they have owed allegiance. Some of the big companies have given the men in the field the utmost freedom of action. Others have tied local chiefs with such binding cords that not even the semblance of a decision could be made without main office approval. But regardless of its nature, the influence of parent company control has colored in greater or lesser degree the thought and actions of every man who has been a part of one of the big systems.

For some, the cutting of these ties will provide welcome release. For others, it will represent the severance of comforting support. But for all, it will bring the need of a revised outlook. The man who has been clamoring for freedom must learn that liberty carries obligations. The man who has welcomed the shelter of protecting wings must learn that independent courses of action can lead to exhilarating rewards.

Having sized up this picture of his job, having recognized the full import of the independence that is now his, the kind of utility man we're thinking of will next seek the most effective distribution of his thought and energy.

Naturally, as head of an organization that owns equipment, that hires people, and that has undertaken specific service commitments, an important share of his interest must go to the supervision of the internal activities and direct consumer relations which identify his particular company's line of business. But faithfully as he may desire to discharge these functions, the man who sees the broader picture in all its significance will realize that they must form only one phase of his job.

Recognizing the peculiar interdependency that exists between the welfare of his community and the business health of his very special type of business, he will consciously knit into the fabric of his career an active and intensive program of community interests.

This means that he will, from the beginning, assign a definite proportion of his working time to such matters—that he will create an executive set-up which will allow him the requisite freedom of action—that he will make agreement on the importance of such work one of the conditions when accepting managerial responsibility.

The danger facing every man in such a situation is his natural inclination to set first about the job of putting his internal house in order—leaving the question of public relations for later attention. But it must be remembered that the public utility business is, in essence, a public relations business. Setting up proper working methods for integrating the company into the life of the community is just as important as reviewing auditing procedures or checking generating capacity.

Now, all this does *not* mean that our utility man will start out by making a

Changes in Our World

"TREMENDOUS things are happening to our world—not only on the far-flung battlefields of global war—but here at home as well. Under the stress of conflict, the whole pattern of our social and economic life is undergoing changes staggering to the imagination. Peaceful rural areas are becoming teeming industrial zones. Enormous masses of population have trekked back and forth across the land at the beckoning of war-time jobs."

big noise in the public square. His task is much more involved than that.

Rather will he set as his first goal the accomplishment of a comprehensive, many-faceted, incisive research job. He will begin by making it his business to know exactly what forces govern the personal and economic lives of the people who dwell within his territory. He will try to see his town, or his group of counties, or his state whole. He will inform himself on such subjects as products, industrial facilities, raw materials, trade patterns, cultural interests, local history, and basic character. He will know what new plants have been built, what new homes have gone up, what kind of people have come into the area, what holes have been left by migrations elsewhere. And he will make it his particular business to meet people and ask questions.

NOR will he forget to keep note of trends in the country generally. He will endeavor to maintain a picture, not only of local conditions, but also of such general conditions as affect the well-being of the section receiving his major attention.

In short, his initial goal might well be to become "the best informed man in town."

Such an accomplishment will not be arrived at overnight. On the other hand it will not be achieved by a mere consumption of time. It calls for the capacity of organizing and screening channels of information—and it will produce results only if it is recognized as a definite job to be planned out and worked at.

To the man who is continuing on in the same locality—with only his status changed — the degree of emphasis

placed upon this phase of his responsibilities may appear uncalled for. Many of the things recommended to his attention here may represent subjects on which he is already well informed. But before taking his knowledge for granted, he will do well to reëxamine it searchingly in the light of his new rôle as the complete embodiment of what the utilities stand for.

The acquisition of all this information—and the digesting of it—is no end in itself. Rather does it represent the creation of the one master key without which vision, courage, technical skill, integrity, and good will are powerless. For the opportunity that awaits the utility executive is not just the opportunity to become a good company manager—it is the opportunity to place the utilities—as now owned and controlled—squarely in the public mind as a force beneficial in human affairs.

THIS knowledge is the foundation upon which all sound policy making rests. There is no such thing as a public utility policy of purely internal concern. A faulty policy—or even a wise policy unwisely timed or inadequately justified—can produce repercussions of ear-dinning intensity. Knowing the peculiarities of his community, the conditions influencing community reactions, the events yielding most pressure upon community thought, the far-sighted executive can guide his company along paths best calculated to maintain a judicious course between business requirements and public approval.

But sound policy making is not enough! The one thing that emerges from a study of the events of the last twenty years is that good citizenship alone will not earn for a utility company the dynamic support of its customers in a time of crisis.

To fix itself in the regard of its community, a utility can follow only one sure path. And that is to display—through the human beings who conduct its affairs—a positive character sufficiently strong to overcome the apathy of the general public.

This requires, first, that the men who occupy positions of responsibility with the utility shall make it their business to make themselves known—and widely known—not just as public-spirited individuals but as avowed spokesmen for the company they represent. And, second, it demands of them sufficient participation in community affairs to establish their integrity, their interest, and their wisdom in the public mind.

IT is towards this end that this whole argument has been leading—it is in this direction that the great opportunities awaiting tomorrow's utility executives will be found—it is in this way that the continued participation of the privately owned utility company in the American scene is to be assured.

So it is that as his ultimate responsibility, the man who now accepts full authority will work towards that day when he can adequately exercise active leadership in the affairs of his city or state or region—proving by word and deed that he recognizes the obligation his company owes to the people whose servant it is.

He will permit himself to become a public figure—accepting the buffetings that accompany assumption of such a position. He will justify his interest in

community matters by a candid avowal of his company's stake in its well-being. He will express his opinions—openly—on issues of common concern—whether they be economic, social, or political. He will not wait to jump on band wagons at the last minute, but will be among the first to advocate constructive programs based on his own sound knowledge of conditions.

He will draw his share of brickbats—but he will gain the deeply satisfying reward of public respect—not only for himself but for the business interests he represents. Courage in a business leader has never cost him the admiration of his fellow citizens. And it won't now!

The opportunity is golden. But it will be realized only if the men to whom it is offered start marching toward it now—while these moments free of antiutility agitation last—and before the issues of another wave begin to stir.

Halfway to Moscow

"THIS *is how Sir William Beveridge describes his own long-awaited report on British social insurance. The phrase is enigmatic, and we shall have to wait until November 26 [1942], on which date it is expected the report will be made public, to find out what it really means. And in the interim it will be best to eschew speculation. But if the exclusive interview with Sir William published in last Friday's* DAILY TELEGRAPH *gives an accurate forecast, a completely new economic system is proposed. In another connection, that of population and housing, an interesting revelation emerged from the interview. The view was expressed that, if the British race is to continue, women will have to cope with more children; to that end conditions must be made easier for them, and the housing question is of paramount importance. Then Sir William continued:*

> *" 'He would suggest all-electric houses, but the last time he advocated this he got into severe trouble with the gas companies.'*

"Though deplorable, that is not altogether surprising. But it gives point to Sir David Milne Watson's recent comment—'electricity could never have got where it is today without a struggle.' Nor will it get much farther if it compromises after the war on its humanitarian mission of abolishing dirt and drudgery from the home."

—EXCERPT *from Electrical Times (London), (November 19, 1942).*

Wire and Wireless Communication

THE Federal Communications Commission on January 20th announced that the American Telephone and Telegraph Company has agreed to reduce rates on long-distance telephone calls of more than three minutes and to cut charges for leased wire services. The commission estimated the agreement would result in an immediate saving of $34,700,000 to the public and cut the annual revenue of the company's Long Lines Department by some $50,700,000.

The "settlement," the FCC said, was arranged at conferences between company and commission officials after last December's hearings on a government order to show cause why the AT&T rates and other charges should not be reduced. It said the proceedings would be dropped upon filing of "appropriate tariffs" by the company and that further hearings on the show-cause order, scheduled for January 21st, had been canceled.

Emphasizing that the rate reductions do not apply to the initial 3-minute conversations of long-distance calls, the commission said it did not expect any increase in the use of this type of service. And it renewed its appeal to the public not to make "unnecessary" long-distance calls. Reductions provided were outlined by the commission as follows:

Overtime telephone — from one-third to one-fourth of the rate for the initial 3-minute period.

Leased private lines—equivalent to approximately 25 per cent in private telephone and 35 per cent in private telegraph lines.

Telephone lines used "casually" by broadcasters—approximately 50 per cent reduction for smaller stations, and from $8 to $6 per air-line mile for larger stations.

THE commission said the reductions would be applied to the "present going rates" of the company's Long Lines Department:

1. $11,900,000 to private line telephone and telegraph and program rates, effective February 1st to Long Lines and March 1st for the interstate services of associated companies.

2. $11,200,000, retroactive to January 1st, in increased share of connecting carriers' (independent and associated companies) divisions of Long Lines revenues on the present board-to-board basis.

3. $13,700,000 in increased share of connecting carriers' divisions of interstate toll revenues upon a station-to-station basis, effective on the date of filing appropriate tariffs.

4. $22,800,000 in overtime rates of Long Lines and on interstate business of associates, effective February 15th for Long Lines and March 1st for associated companies.

WALTER S. Gifford, president of the American Telephone and Telegraph Company, commenting on the agreement which terminated the rate case instituted by the FCC on November 20, 1942, said:

It will be noted that no reductions in basic

message rates are to be made and that the reductions agreed to were those least apt to add a further burden to the already overloaded long-distance lines through stimulation of business.

The extraordinary volume of long-distance business and the overloaded condition of the Long Lines plant have resulted, probably only temporarily, in a rate of earnings for the Long Lines Department which is in excess of the average for the Bell telephone system as a whole.

The Long Lines Department rates are under the exclusive jurisdiction of the Federal Communications Commission which has jurisdiction over interstate rates only. The commission insisted that the earnings from such rates should be considered by themselves regardless of over-all system earnings and insisted that, when so considered, they produced a return greater than could be justified.

* * * *

SPEAKING for 265 telephone companies—including the Bell system—serving subscribers in Oklahoma, H. W. Hubenthal, secretary of the Oklahoma Telephone Association, said recently that the man-power situation is easing just now, and that service throughout the state is almost normal. However, more men are being asked for the U. S. Signal Corps, "and the situation will become critical unless the companies can obtain deferments in a good many cases."

So far, the 264 small independent companies and the Bell system have been working together in providing enormously expanded facilities in the defense areas. "In one case," said Hubenthal, "where there was a sudden demand on a small company operating in a rural community for telephone service for a camp accommodating some 30,000 officers and men, the problem was worked out by the Bell trading to the small company a community system of approximately the same size, then putting its own resources to work at the job."

"Coöperation," says Hubenthal, "is complete in the emergency between all companies. Without it, they could not have handled the problems of man power and materials shortages."

* * * *

A RESOLUTION ordering an investigation of the Federal Communications Commission was unanimously approved by the House Rules Committee on January 18th, and overwhelmingly voted on the floor of the House on the following day. Only a few scattered "no's" were heard on the voice vote approving the probe.

Sponsored by Representative Cox (Democrat) of Georgia, long a critic of FCC Chairman James L. Fly, the study will be made by a 5-man committee appointed by Speaker Rayburn.

Cox declined to disclose what he expected to develop through the investigation, which he predicted the House would approve overwhelmingly, but Rules Committee members said the study would be "one of the hottest" ever undertaken on Capitol Hill. Prior to the vote on the House floor, however, Cox bitterly denounced Fly for alleged "Gestapo tactics," censorship, and communistic sympathies.

Cox had sought approval of the resolution last year, when he asserted that Fly was undertaking to set up a censorship of all communications and had failed to divorce from the FCC personnel persons whose Americanism had been questioned by the Special House Committee on Un-American Activities.

Representative Sparkman (Democrat) Alabama, said he would attempt to broaden the investigation resolution to include the entire radio industry.

"Radio broadcasting vitally affects the public," Sparkman told the House. "If there is to be an investigation, we want one which will get into the basic issues in this most important field."

Sparkman said he wanted to find out "what the commission is doing" and how the radio industry itself operates.

"We want to know about the industry, an industry in which a few networks dominating the field make inordinate profits and in which the small independent stations in our rural sections are being forced to the wall," Sparkman declared.

THE Alabaman suggested the investigation should undertake to disclose the extent of monopoly and control over sources of program material, whether

there has been fairness in allotment of time for discussion of controversial issues, and whether complaints about the type of certain programs have been justified.

The Cox resolution (HR 21), as printed in the *Record,* was as follows:

> *Resolved,* That there is hereby created a select committee to be composed of five members of the House to be appointed by the speaker, one of whom he shall designate as chairman. Any vacancy occurring in the membership of the committee shall be filled in the same manner in which the original appointment was made.
>
> The committee is authorized and directed to conduct a study and investigation of the organization, personnel, and activities of the Federal Communications Commission with a view to determining whether or not such commission in its organization, in the selection of personnel, and in the conduct of its activities, has been, and is, acting in accordance with law and the public interest.
>
> The committee shall report to the House (or to the clerk of the House if the House is not in session) at the earliest practicable date during the present Congress the results of its investigation, together with such recommendations as it deems desirable.
>
> For the purposes of this resolution the committee is authorized to sit and act during the present Congress at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses, and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any member designated by him, and may be served by any person designated by such chairman or member.

According to custom, Representative Cox, as author of the resolution, would be the chairman of the special investigating committee.

* * * *

THE Board of War Communications has issued an order controlling the setting up of a system of priorities on certain teletypewriter exchange messages commonly known in the trade as TWX messages. By virtue of authority vested in the board by Executive Order No. 9089 (March 6, 1942), the Board of War Communications directed the following order of priorities:

Priority No. 1:

> shall be available on request for all TWX messages requiring immediate transmission for war purposes or to safeguard life or property in the following respects: movement of armed forces during operations, urgent messages to armed forces, danger warnings of the presence of the enemy, hurricane, flood, or other disasters affecting the war effort or public security.

Priority No. 2:

> shall be available for urgent messages requiring immediate transmission for the national defense and security and the successful conduct of the war, or to safeguard life or property other than those specifically subscribed under Priority No. 1.

Priority No. 3:

> shall be given to messages requiring prompt transmission of the following character: important government functions, orders for war equipment, protection of essential supplies, maintenance of essential public services, supply or movement of food, civilian defense or public health and safety.

A record shall be kept by all telephone carriers of each priority TWX message for a period of two years after the date of priority. The American Telephone and Telegraph Company will file with the Board of War Communications at the end of each month a report for Bell system companies, showing the number of TWX priorities given for each rating and the period of time required to complete circuits for each class of priority messages.

The order imposes penalties for violation and abuse of priority privileges by subjecting TWX facilities so employed to "closure, removal, or other appropriate governmental action."

* * * *

THE Senate Interstate Commerce Committee on January 18th re-

ported favorably on the bill to permit the consolidation and merger of domestic telegraph companies. The bill, introduced by Senator McFarland of Arizona (S 158) differs from a bill introduced in the House by Representative Bulwinkle of North Carolina (HR 499) in that the latter would not only permit the merger of the domestic telegraph carriers (Postal Telegraph and Western Union) but also the merger of international telegraph carriers, as, if, and when approved by the Federal Communications Commission.

The committee action on the Bulwinkle bill was held up temporarily because of the slight delay in organizing the membership of the House Interstate and Foreign Commerce Committee, as a result of the considerable turnover in the membership of the lower chamber. However, Representative Bulwinkle, who is chairman of the subcommittee handling such legislation, expected to make rapid progress in the near future. The labor provisions of the Bulwinkle bill are as follows:

For a period of four years after approval of any merger, any employee of the merged company who might lose his job because of the consolidation would have a preferential hiring and employment status with the consolidated company.

Pension, health, and disability rights would be maintained for the workers of both companies involved, and any full-time employee who has been in the armed forces since August 27, 1940, would get a job after the war is over if he applied within forty days after his honorable discharge from the service.

Except for insubordination, incompetency, or similar cause, no worker could suffer a salary cut, be discharged, or furloughed in the six months' period preceding the effective date of the merger.

A. N. Williams, president of Western Union, estimated that the elimination of "wasteful duplication" of facilities would release for other use at least 100,000 miles of copper wire, or some 10,000 tons of copper, in addition to 4,000 teleprinters and other equipment for diversion to the country's armed forces.

* * * *

JAMES Caesar Petrillo, president of the American Federation of Musicians, will give school children and other amateur musicians a "fair opportunity" to present their talents over the radio, Joseph A. Padway, counsel for the union, promised a Senate Interstate Commerce subcommittee on January 14th.

In addition, in a broad defense of the Petrillo union's ban on recordings, which began last August, Mr. Padway asserted the musicians were "fighting for their very existence" against "a handful of tremendously wealthy and powerful corporations" which, he said, control the production and distribution of recorded music.

Several times during the hearing the union was taken to task for banning from the air some amateur orchestras on the ground that they replaced professional musicians who might otherwise have appeared at that time.

* * * *

ARMY Engineers will string a telephone system the length of the Alcan highway to Fairbanks, Alaska, which will include 7 voice and 14 teletype circuits, the War Department announced last month.

The United States already is linked with Dawson Creek, British Columbia, southern terminus of the highway, since lines have been laid from Edmonton, Alberta, a distance of 400 miles. Edmonton is connected with telephonic communications in this country at Helena, Montana.

* * * *

A REDUCTION of about 500,000 miles a month in its motor vehicle travel as compared with a year ago, bringing its present monthly mileage to approximately 1,000,000, was recently reported by the New York Telephone Company. During the year its motor fleet, operated throughout its service territory in New York state and western Connecticut, has been cut by more than 300 to about 2,300.

Financial News and Comment

By OWEN ELY

Federal Court Upholds Death Sentence

THE United States Circuit Court of Appeals on January 13th held the "death sentence" provisions of the Utility Act constitutional, denying North American Company a review of two SEC orders which would require it to dispose of all properties excepting the Union Electric Company system. The court stated:

> Compelling the holding company to dispose of its securities is not the same as condemning private property for public use without paying just compensation . . . Under § 11(c) the petitioner is given a year within which to comply with the order and may on proper showing obtain an additional period not exceeding one year. If divestment can be effected by distribution in kind, there may be no loss in values. If, as petitioner contends, such distribution will be impossible and a liquidation by sale becomes necessary, the process may be painful to its common stockholders, but we cannot say that the remedy selected by Congress is so unreasonable, arbitrary, or capricious as to constitute taking property without due process.

The court evidently felt that the interstate commerce clause of the Federal Constitution has now been so broadly interpreted (particularly under the Agricultural Adjustment Act of 1938 which permitted the government to regulate a small farmer's production of wheat for his own use) that "we cannot say that Congress has exceeded its power in regulating the ownership of securities by a holding company whose subsidiaries are engaged in interstate commerce."

The court also upheld the SEC on other points. It held that § 30 (which directs the SEC to make studies for integrating the utility industry on a geographical basis) need not be considered as having priority over § 11, on a timing basis. It also upheld the SEC selection of Union Electric as the system to be retained. It refused to support North American's view that additional systems could not be operated independently without loss of substantial economies; at any rate, the court held itself incompetent to review or reweigh the evidence.

There is no indication as yet whether North American Company will appeal its decision to the Supreme Court. Engineers Public Service is expected to continue its own test of § 11 in the courts and the UGI Case also is awaiting decision.

Associated Gas Trustees Plan New Top Company

THE trustees of AGECORP and AGECO recently issued a joint report reviewing their general progress with the reconstruction of the Associated system and suggesting a detailed program for reorganization of the two top companies.

With reference to the so-called recap litigation regarding the relative claims of AGECO and AGECORP bondholders, a compromise formula was proposed some weeks ago and was referred by the court to Special Master Crane for hearing and reports. The present report presents detailed data on this plan, and also discusses the problems involved in forming the new top company. Participation in the "estate" of the two combined holding companies would be as shown on page 168, according to the compromise plan (all junior securities of AGECO

	Principal Amount or Liquidating Value	*Percentage Of Net Estate For Each Class Of Allowed Claim Per Recap Compromise*
AGECORP 73s	$ 23,931,065	23.8%
AGECORP 78s	111,565,640	50.7
AGECO fixed interest debentures	58,167,490	22.5
AGECO sinking-fund income debentures 83s	1,217,630	.4
AGECO sinking-fund income debentures 86s	1,732,120	.5
AGECO convertible debenture certificate	3,808,477	.6
AGECO convertible obligations (in hands of "original holders")	Approximately 20,000,000*	1.5
Total	$220,422,422	100.0%
General creditors	3,500,000**	

*Estimated to be total amount held by "original holders."
**Estimated maximum after deducting about $2,500,000 of claims already classified as participating security claims.

except those listed would be excluded from participation).

The "principal amount or liquidating value" in the above table does not represent a valuation of the assets of the two companies, but the trustees believe that on any reasonable theory of valuation, the assets are worth substantially more than the total of the estimated senior claims, including the 8s of '40, and substantially less than the total of all debenture claims against the estate and claims senior thereto. It is believed that the court may properly exclude from participation all claims for which no provision is made in the recap compromise.

The above table does not take into account the claims of UESCO (Utilities Employees Securities Company) bondholders, or the AGECORP 8s of 1940. The trustees expect to liquidate the UESCO portfolio, with the exception of AGECO and AGECORP securities, permitting payment of about 40 per cent of the principal amount and leaving about $4,000,000 outstanding. UESCO's securities of the two AG&E companies would be written down to 83.2285 per cent of the amount at which similar securities in other hands are recognized. The trustees are hopeful, however, that UESCO will receive about $4,000,000 in cash, to pay off the balance of its obligations, in which case the new securities distributable to it would be appropriately reduced. In other words, it appears that UESCO bonds, currently around 78, may reasonably expect to receive par if the plan is consummated.

Regarding the $6,546,300 AGECORP 8s of 1940 held by the public (currently selling around 87), the trustees, after appraising the strength of the different legal contentions regarding the position of the bondholders, concluded that the claims for principal and interest to July 10, 1943, should be settled at $102.56 for each $100 principal, and that in addition 4 per cent per annum should be allowed from July 10th to the effective date of any reorganization plan.

REGARDING cash required to pay off senior obligations such as the 8s and the UESCO's, the trustees do not seem very hopeful that available cash will be sufficient for this purpose; hence it may be necessary for the new top company to issue some debt securities, to be amortized out of earnings or property sales. However, such debt would be relatively small and the only remaining security would probably be common stock, which could easily be divided in the proportion of the security holders' claims as tabulated above.

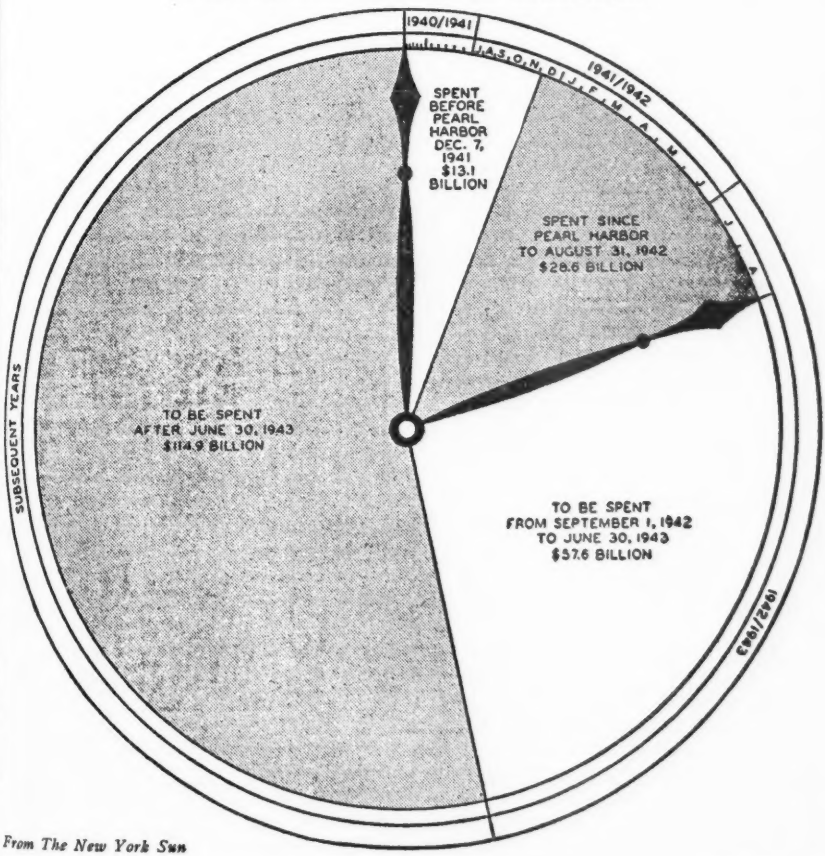
The new top company would, of course, have to proceed with geographical integration, capital simplification, and other requirements of § 11, in the subholding and operating companies. The "grandfather" clause will be taken care of (except for a few temporary or unavoidable instances, due in some cases to state requirements) by the formation of a single top company.

Much spadework will remain to be done in the sale and rearrangement of properties. Considerable progress has been made in revamping Associated Electric's important subsidiary, Pennsylvania Electric Company; and the latter now proposes to take over two subsidiaries of NY PA NJ, Keystone Public Service and Bradford Electric.

GenGas has submitted a plan for the corporate rearrangement of the proposed Florida-Georgia system. There is still hope of selling the two large South Carolina companies to the public service authority. (It is understood that a bill is being introduced in the recently convened South Carolina legislature to give the authority powers to complete the

THE SCHEDULE OF WAR COSTS

Total Program As of July 31, 1942: $214,200,000,000



From The New York Sun

purchase.) But a merger program for these two companies is also under way to improve the situation if the sale cannot be effected. It is proposed to issue a consolidated company preferred stock, which could be distributed to the public holders of GenGas preferred. Efforts are also being made to sell other properties.

Regarding the important question of subordination of GenGas' securities held by AGECORP, the trustees merely state that they hope to resolve the SEC proceedings against GenGas by distributing operating companies' securities to the public holders of GenGas securities: "The balance of GenGas' assets would thus become directly available to the AGECORP estate, and the way would be paved for the elimination of GenGas as a separate subholding company." This does not throw much light on the question of the eventual liquidating value of publicly held GenGas A, currently selling around 2 on the stock exchange, in which there has evidently been considerable speculative interest in recent weeks, presumably in the hope that the South Carolina sale could be effected.

REGARDING the important angle of Federal taxation, the trustees are now able, under the 1942 Revenue Act, to consolidate a larger number of system companies, which it is believed will result in a substantial reduction of the excess profits taxes which would be payable on a separate return basis. While the proposed reorganization plan raises some serious questions regarding loss of equity invested capital for excess profits tax purposes, it is believed that, even after reorganization, little or no excess profits taxes would be payable under present tax legislation.

The report is a "mine of information" for those interested in the Associated Gas picture. The exhibits include an up-to-date chart of corporate relations, a list of system property sales aggregating $59,415,976, system earnings statements, etc. There is also a detailed table showing the amount which might be realized by holders of various system securities if the net values available total various amounts ranging from $40,000,000 to $140,000,000. It is estimated on this basis that AGECORP 4s of 1978 (currently selling around 18 over the counter) might be worth about 18 to 64, while the AGECO 5s of 1950 (around 15 on the curb) might be worth about 15 to 55.

Philadelphia Transportation Company

(*Tenth of a series of brief articles on transit companies*)

PHILADELPHIA Transportation Company was incorporated January 1, 1940, as successor under reorganization to Philadelphia Rapid Transit Company and its lessor and subsidiary companies. The corporate set-up of both the old and new companies is quite complicated, although the reorganization somewhat simplified the corporate set-up by merging 27 lessor railway and traction companies and 37 additional companies not parties to the plan (all of whose stock was owned by the parent company or its affiliates). A large number of small underlying bond issues were exchanged for securities of the new company, but details of these exchanges are too lengthy for description. Preferred stockholders of the old company received new preferred, and—unusual in a reorganization—the old common received an equal number of shares of new stock.

The present company as of December 31, 1941, had outstanding $1,865,260 refunding 4s/69 (currently around 90) and $32,280,944 income 3-6s/2039 (currently around 64). There were also a large number of underlying issues, the most important being Market Street Elevated first 4s/55, currently selling around 101. The $1 participating preferred is currently around 7½ and the common around 4.

For the twelve months ended September 30, 1942, compared with previous similar periods, earnings were as shown at top of page 171.

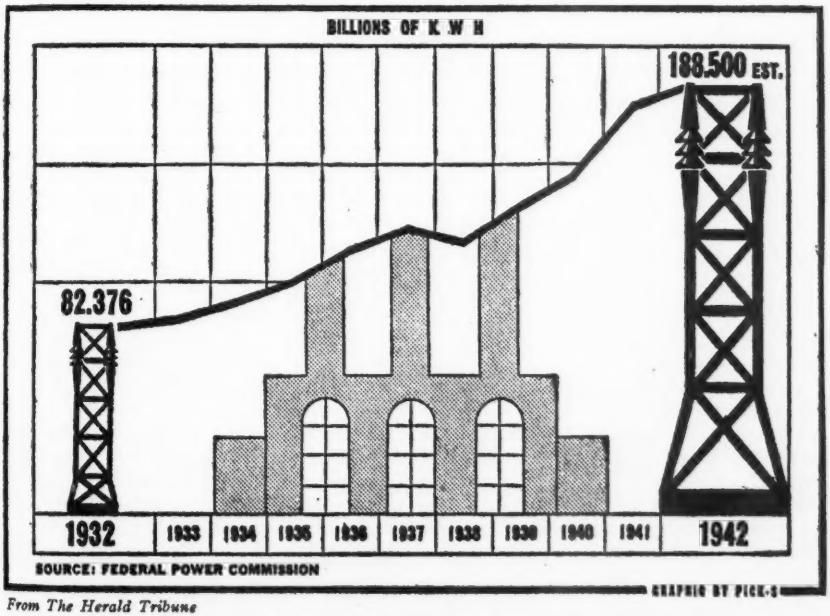
Net earnings for 1942 were surpris-

	Year Ended 9/30/42	*Year Ended 9/30/41*	*Calendar Year 1940*	*Calendar Year 1939*
Number times fixed charges earned	1.41	1.40	1.24	1.17
Per cent earned on income bonds	9.39	8.88	6.57	5.52
Earned per share part. pfd. stk.	$1.46	$1.24	$.25	...
Earned per share on common	$ .48	$ .25	(Def.)$.79	...

ingly low, considering the gain of 24 per cent in operating revenues; the increase was largely eaten up by higher taxes and rentals. The management also set aside a special reserve of $900,000 representing "extraordinary costs and contingencies resulting from war-time operating conditions not taken care of by current expenditures." Had this reserve been omitted (it is not clear to what extent it was actually needed), net earnings would have been much larger on the preferred and common shares.

The preferred stock has preference as to $1 dividends; after the common receives $1 they participate, the preferred receiving 1½ times the amount per share of any additional dividends on the common. Preferred dividends are cumulative only to the extent earned. In 1942 $1.1127 was paid on the preferred (the amount paid represented the accumulated arrears as of December 31, 1941); and presumably payments in 1943 will amount to $1 plus 1½ times any payment made on the common. If the contingency

PRODUCTION OF ELECTRIC ENERGY



From The Herald Tribune

Electric power production reached new all-time peaks in war-time America last year at 188,500,000,000 kilowatt hours, with booming war plants largely responsible for increased demand.

accrual of $100,000 a month is continued, it appears likely that dividend payments (if any) on the common will be small.

The Electric Bond and Share Proxy Fight

SAMUEL Okin, the indefatigable Electric Bond and Share stockholder who has been fighting almost impartially the Electric Bond management, the SEC, and the courts, met with a rebuff from the Supreme Court recently. The power of the SEC to regulate communications to stockholders prior to (as well as during) the solicitation of proxies was upheld January 5th in a 2-to-1 decision of the United States Circuit Court of Appeals (reversing a district court decision of October 9th). In a separate action Federal Judge Rifkind on January 9th granted an injunction to the SEC against the circulation of Mr. Okin's letter. On January 18th the Supreme Court refused Mr. Okin a review of the circuit court's decision.

However, Mr. Okin has in the meantime prepared a new 4-page letter asking for a proxy for himself, with the idea of calling for a special meeting of stockholders to elect a new board of three directors only (of which two would constitute a quorum). Mr. Okin's new letter states that "for the past eleven months I have been engaged alone in a tremendous battle as a stockholder to conserve the assets of the company." He then reviews at considerable length the various legal steps which he has taken in an effort to protect the interests of common stockholders. He favors the use of approximately $24,000,000 cash held by Electric Bond to purchase additional preferred stock in the open market (a method which the SEC apparently does not specially favor). He also wants Electric Bond to divest itself of control over the management of Electric Power & Light and American Power & Light, since the investment in these companies represents only about 3 per cent of the entire assets, while he considers such control to be detrimental to the company.

While the new SEC proxy regulations make some provision for presentation of dissenting opinions, the New York office of the SEC reports that Mr. Okin's latest letter is being carefully scrutinized.

Standard Gas Working on New Plan

STANDARD Gas & Electric Company, which recently received a year's extension of its "death sentence" order, is reported working on a plan for its own recapitalization. It is also planning to eliminate Louisville Gas & Electric (Delaware) from the system, and to refinance Oklahoma Gas & Electric.

Niagara Hudson Power

IN the January 7th FORTNIGHTLY, page 36, reference was made to FPC and SEC orders requiring the Niagara Falls Power Company to make a write-off of $15,787,688. This was technically incorrect as regards the SEC, since that commission has not yet ordered a write-off although it did order an investigation. The passing of the preferred dividends of Buffalo, Niagara & Eastern and Niagara Hudson Power was not *directly* due to FPC or SEC orders, but apparently reflected the fears of the directors of those two companies that the capital of both companies would be impaired by the write-off ordered by the FPC (and by other write-offs under general consideration), which in turn might make it illegal to declare dividends under the laws of New York state.

¶ "THE *autocracy of bureaucracy is as reprehensible as autocracy under any other guise.*"

—JOHN W. BRICKER,
Governor of Ohio.

What Others Think

Is There a Pattern of Precedent in The Puerto Rican Utility Seizures?

BALKED by a unanimous circuit court from seizing the properties of the Puerto Rico Railway Light & Power Company under the Lanham Act, the United States government has again taken over the properties under the Second War Powers Act upon the express direction of the President. Arthur Krock, Washington correspondent for *The New York Times,* in a recent article in that publication, sees in this second expropriation a critical test of the government's authority to take over public utilities under cover of a war emergency. The corporation whose properties were taken has already opened proceedings in the Federal District Court at San Juan to resist the new seizure. Mr. Krock stated:

> If the courts sustain the expropriation under this statute, a broader path than existed before will be open to the New Deal goal of seizing all privately owned utilities and owning and operating them federally. And the difficulties of restoring them to private ownership and operation after the war will be multiplied.

The Lanham Act provides that when the President finds the national defense program requires it the Federal Works Agency, by purchase, donation, exchange, lease, or condemnation, may acquire improved or unimproved lands or interests that will fulfill a need for public works. On this authority the FWA last summer seized both the "movable" and "immovable" properties of the Puerto Rico privately owned utility—generating plants and a transportation system being among the movables.

THE first circuit court, composed of three judges who were appointed by the President, set aside the condemnation judgment. It held the record did not sufficiently demonstrate that the President had approved the seizure of the movable properties. It held further that, even if the forcible acquisition of the immovables were approved, "that would leave the United States irrevocably committed . . . to the payment of compensation for something which the Federal Works Administrator might never have dreamed of taking had he correctly apprehended the scope of his powers under the (Lanham) act."

The gist of the decision was that, even when the effect on national defense work is taken into consideration, the government may not—at least under the Lanham Act—expropriate private property, lock, stock, and barrel; and, despite the President's approval, said the court, "the act gives no authority for the condemnation and taking over as a going concern of the properties, real and personal, of a privately owned public utility."

Following this decision government counsel, in collaboration with administration officials favoring public utility ownership, according to Mr. Krock, decided the court had made the Lanham Act an insurmountable barrier. Thereupon, a letter was drafted for the President's signature, addressed to Administrator Fleming, which Mr. Krock summarized as follows:

> The President fully understood that the expropriation would be complete when he gave his original approval. His purpose was to relieve a shortage of electrical transmission and distribution facilities on the island that was hampering naval and military establishments there. To "dispel the uncertainty" of the President's approval, as pointed out by the first circuit court, Mr. Roosevelt advised Administrator Fleming that he found in June, and finds again, that the shortage exists; it hampers the defense program and the "health, safety, and welfare of defense workers"; the utility properties

cannot otherwise be provided save "by the imposition of an excessive tax burden"; and, specifically, the immovable must also be expropriated.

"For the purpose of relieving and remedying such shortages," the letter signed December 11, 1942, by the President continues, "and for military, naval, and other (war) purposes, I approved and I do now approve . . . the plan originally conceived and formulated by you . . . Pursuant to authority conferred on me by the Second War Powers Act of 1942, I authorize and request you to take such action as may be necessary to acquire any properties, real or personal, of the said Puerto Rico Railway Light & Power Company and the Mayaguez Light, Power & Ice Company, and to complete the said project formulated by you."

THE expropriation now rests, therefore, on the foundation of the Second War Powers Act and has been shifted from the defective support of the Lanham Act. The outcome of this episode will be of the greatest importance to the post-war system of private enterprise, and to those who oppose or advocate government ownership and operation of utilities, Mr. Krock says. For, as the first circuit court pointed out, Congress emphasized economy of administration, avoidance of duplication, and utilization or enlargement of existing facilities wherever practicable. And this emphasis was apparently passed over by the executive in the Puerto Rican seizure.

The real purpose of the condemnation, according to evidence produced by the Puerto Rican companies, was to transfer the properties to the Puerto Rico Resources Authority. For example, in Governor Tugwell's radio broadcast of June 30, 1940, he said quite frankly to the people of the island, "these properties are now yours," having been acquired for the Puerto Rico Water Resources Authority.

On April 28, 1942, when preparations for the condemnation were probably already under way, the governor of Puerto Rico issued a proclamation ordering "that street lighting be substantially reduced, and that, after 10:30 P.M., it be completely eliminated wherever power is produced by oil." Since all of the power-producing agencies on the island are interconnected, power wasted by one system, even though it be produced by hydro plants, would be a loss to the whole island. Thus, selecting those power-producing agencies that generated part of their electricity by oil was, therefore, difficult to understand for the assigned reason.

A FEW days later, on May 1st, the War Production Board issued a limitation order "To Provide for the Curtailment of Electric Power in the United States." In addition to limiting the use of electricity for certain purposes in electric power shortage areas, this order also provided for

Integration of Power System Operations.

(1) Each utility shall so operate its reservoirs, generating plants, substations, transmission lines, and other facilities and shall so interchange electric power with other utilities as to achieve the maximum coördination of power supply for war production and essential civilian use, and for relief of power shortages. Such operations shall, depending upon the supply and availability of fuel, water, and generating capacity, include the following:

(1) making available the maximum peaking capacity during periods when such capacity is needed;

(2) using water power to achieve the maximum conservation of fuel;

(3) maintaining essential usable reservoir storage, without wasting water.

These instructions definitely embodied a method of procedure as between any two or more power systems, whether public or private, to achieve conservation of fuel. On systems already interconnected, no additional equipment was necessary and it was merely a matter of the two systems coöperating to achieve the ends sought.

ON May 7, 1942, a telegram was addressed to the power branch of the War Production Board asking if this limitation order was or could be made extensive to Puerto Rico. No reply was immediately received to this communication and it was not until later that it was learned informally that Order No. L-94 is not extensive to Puerto Rico.

WHAT OTHERS THINK

On May 11, 1942, Antonio Lucchetti, executive director of the Puerto Rico Water Resources Authority, was asked, in the interests of conserving fuel oil to the fullest possible extent, to sell the private company power under the terms of the interchange contract in force. To this request Mr. Lucchetti replied:

> Please be informed that we are not in a position to produce surplus power and, therefore, cannot furnish you any such class of power.

In a subsequent letter, dated May 30, 1942, from R. R. Ramirez, acting executive director, Puerto Rico Water Resources Authority, appeared the statement:

> We are sorry that we do not have surplus power available and since you are not interested in the purchase of power generated from water drawn from storage which we need to insure power delivery to our regular customers, there appears to be no alternative but to leave the matter as it stands.

These statements by officials of the Puerto Rico Water Resources Authority would seem to indicate an unwillingness to coöperate in any such plan of integration of power system operations as is ordered in Limitation Order No. L-94 of the War Production Board.

On June 29, 1942, the Federal Works Agency went into the United States District Court for Puerto Rico and obtained an order from the court for immediate possession of the two privately owned electric utility systems in Puerto Rico. On the same day, the Federal Works Agency Office of Information issued a press bulletin at Washington.

This bulletin reported that "General Fleming said that the unification will help to save fuel oil and to relieve difficulties of oil transport. The systems will be integrated with publicly owned utilities and will be operated for the Federal Works Agency by the Puerto Rico Water Resources Authority. . . ."

On September 5, 1942, despite the fact that considerable fuel oil was still being used for the generation of power on the island of Puerto Rico, Governor Tugwell in a proclamation fully restored public lighting all over the island. He did this simultaneously with an announcement: ". . . the hydroelectric system of the Puerto Rico Water Resources Authority has reached in its operation such a degree of efficiency in the saving of fuel oil so that we no longer need deprive ourselves of the street lighting during any part of the night."

This would infer that less fuel was used because of an increase in the efficiency of operation of the PRWRA. Yet, such decrease in fuel-generated power and increase in hydro power as has occurred might well be due to other causes: First, the fact that the wet season began in July and, as usual, continued through December; and, second, the PRWRA brought into service a hydroelectric plant. The question arises, therefore: Could the same saving in fuel oil have been achieved by integrating the operation of the island's systems, through the interconnections already existing, in the manner outlined and ordered in Limitation Order No. L-94 of the War Production Board? If so, is there a possibility that the Tugwell administration in Puerto Rico is, perhaps, more interested in public ownership than in fuel conservation?

—F. X. W.

Marketing Chart Reflects Utility Service

A chart which utility men may find quite helpful in determining merchandising and promotion programs in the future has recently been issued by the Research Company of America, 341 Madison avenue, New York city. This chart, prepared by A. Edwin Fein, general manager, records a wide variety of basic and important statistics for each state and geographic area. Among the

	Gas	Electric Light	Phone	Radio	Private Baths	Needing Major Repair
New England Division	60.2	98.4	50.5	94.4	25.7	11.7
Middle Atlantic Division	74.7	91.8	41.4	94.4	24.2	11.9
E. No. Central Division	57.1	85.5	46.3	91.7	40.7	15.6
W. No. Central Division	34.4	64.4	49.5	85.6	59.5	21.2
So. Atlantic Division	25.0	54.2	25.9	66.0	62.9	25.7
E. So. Central Division	14.9	39.1	17.9	55.3	77.4	31.8
W. So. Central Division	36.2	45.0	24.9	62.5	67.6	28.0
Mountain Division	23.5	64.8	32.9	80.5	59.0	23.9
Pacific Division	60.9	86.8	47.5	92.0	23.1	10.2
United States	48.9	73.4	38.8	82.8	45.3	18.3

items covered are figures on population; retail sales; income tax returns; distribution of families; sex groups; age groups; tenure status; housing facilities and equipment, such as gas, electricity, telephones, radio, private baths; average monthly rent or rental value of homes; educational attainment of population, by grade school, high school, and college. This is perhaps the first time that all such marketing data have been assembled into one chart for ready reference.

The data are presented in grouped columns on a single large page, 22 inches by 17 inches, and classified according to states and geographical divisions. One of the columns, entitled "Housing Facilities and Equipment," includes three utility services (gas, electric, and telephones) together with radio, private baths, and the need for major housing repairs. The comparison of these data is quite interesting. Just as a sample see breakdown according to geographic divisions above.

The basic figures were obtained from various available sources, principally (in the case of utilities at least) from the United States Bureau of Census, Edison Electric Institute, American Gas Association, and American Telephone and Telegraph Company. However, it is the synthesis and the incidental opportunity for comparison which constitute the principal value of the chart for the utility executive.

War Angles on Utility Publicity

THE exigencies of the war effort have had some noticeable effects on publicity material of operating public utility companies in the United States. Usually a utility company uses it space rate advertising for purposes of general good will, improving public relations, or imparting information in connection with the use of the service. All of these functions are still performed in large measure by utility advertisement.

One interesting variation recently came to light in the form of an advertisement placed in the daily press by the Dayton Power & Light Company of Dayton, Ohio. In a broad sense this also was designed to improve public relations of the utility company. But something new is added—a touch of the "good neighbor policy." In short the Dayton Power & Light Company undertook to tell its fellow citizens how to save gasoline. The following passage from the advertisement tells the story:

> *We feel sure you will be interested* in learning that, with your 4-gallon weekly gasoline ration, instead of only 60 miles of travel, you may easily travel 70 or even 80 miles, and at the same time conserve your tires.
>
> Our automotive transportation department, operating more than 250 passenger cars and trucks, has always been interested in improved efficiency and lower operating costs. In 1938, to demonstrate effectively to our own drivers that gasoline mileage was largely a matter of the manner in which the car was driven, we equipped a passenger automobile with a 1-quart clear glass gasoline container, mounted in sight of the driver. We tested over 300 of our drivers

"INTERESTED IN A HOT REFRIGERATOR CHEAP, BUDDY?"

to see how far they could go on a quart of gasoline. Then, after being instructed in how to drive for best gasoline economy, they made a second trip, again with a quart of gasoline. The results were amazing. The poorest drivers went 3¼ miles, an average of 13 miles per gallon. With the same car, over the same route, and under exactly the same conditions, many of the best drivers covered more than 5 miles or over 20 miles to the gallon.

Here were the instructions: Drive in such a manner that you do not have to apply the brakes. That means anticipating the traffic lights, and the traffic jams, long before you reach them, so that you use the brakes as little as possible. Accelerate gradually. Stay in low gear just long enough to get under way, and change to second gear at about four or five miles an hour. Again accelerate gradually in second, and shift to high gear at ten to twelve miles an hour and then again accelerate gradually. In residential areas, drive about twenty-five miles an hour, and remember to try to drive so that you don't have to apply the brakes. Downtown traffic lights are adjusted for 17 miles an hour. There is no point in speeding up to 20 or 25 between lights, and then having to slow down to 10 or 12 to make the next light.

That's all there is to it, and you can expect an extra 3 to 5 miles per gallon, which means that your 4-gallon-a-week ration will take you 70 or 80 miles instead of 60.

This all fits right in with the rubber conservation program, because with this sort of common sense driving, your tires will last just that much longer.

The advertisement is accompanied by a map of the downtown business area of Dayton showing the relative performance that might be obtained in the way of gasoline economy, by careful as distinguished by heedless driving.

ANOTHER Ohio utility presented something more or less new in the way of an annual report on the first anniversary of Pearl Harbor. This was a booklet entitled "The War and Our Company," published by the Cincinnati Gas & Electric Company.

In unusually simple language this 8-page pamphlet presents the "honor roll" of company employees in the armed services (392 men including a soldier killed in action at the Solomons), a description of various activity undertaken by the company as a direct result of the war emergency, a brief record of its contribution, in terms of aid to war production, food production, air-raid protection, scrap collection, war bond purchases, etc.

Bell System Goes to War

IN a report entitled "War Activities of the Bell Telephone System," Keith S. McHugh, vice president of the American Telephone and Telegraph Company, reviews the system's preparations for the national emergency and the steps which it has taken since the war began, to meet the demands of a warring nation. Mr. McHugh's article appeared in the November issue of the *Bell Telephone Magazine*.

As early as September 1, 1939—the day of Hitler's early morning invasion of Poland—the men and women of the Bell system were already aware of the grave emergency which would arise should the United States become involved in the war. The volume of calls reached a new high in those early days, not only in Europe but within continental United States, where the wires hummed with continued activity.

Stating that telephone men and women are not strangers to emergencies, Mr. McHugh cites the case of the hurricane which struck New England and parts of New Jersey and New York in 1938:

> This disaster affected hundreds of communities, and was perhaps the most terrible thing of its kind to happen in New England within the memory of living man. From a telephone standpoint it meant some 600,000 telephones out of service; about 500 communities completely isolated from communication with the rest of the world; thousands of miles of toll wire damaged or destroyed; central office buildings flooded; transportation at a standstill.

The Bell system mustered all its facilities immediately to meet this unforeseen situation. Within forty-eight hours, crews from other Bell companies along the Atlantic seaboard, in the Middle West, and as far west as Omaha, Nebraska, were in motion—working from dawn until dusk to relieve the stricken areas.

EARLY in 1940, when the turn of international events indicated a need for immediate action, a series of conferences between American Telephone and Telegraph and government officials was called. The result was the establishment of a permanent war office in New York, manned and equipped for instant communication and action.

Mr. McHugh stated:

> The lessons learned from that war [World War I] were most helpful in planning to meet some of the things which have already happened in this war. They included experience as to loss of personnel, provision of telephone plant, the security of plant and service (*i.e.*, protection against sabotage and espionage), unusual Army and Navy communication requirements, abnormal traffic volumes, and other related matters.

Carefully prepared plans had been made with the Army and Navy for telephone service at military establishments long before 1940, the report continues. Practical working arrangements for telephone service at Army, Navy, and Coast Guard establishments had been adopted; the Western Electric Company had worked out general plans with the Army for the manufacture of wire and radio communication equipment for war use; a practical working plan for spotting and reporting hostile aircraft had been developed in coöperation with the

"YES, I KNOW THE RULE BOOK SAYS TO EJECT A PASSENGER WHO WON'T PAY HIS FARE. BUT HOW CAN I THROW OFF THE OTHER ONE WHO *WILL* PAY HIS FARE?"

Signal Corps and tried out in maneuvers; and a seasoned plan of meeting disasters and emergencies was in general operation. Today the Bell system, Mr. McHugh states, is furnishing service to more than 2,500 military establishments and government ordnance plants.

Mr. McHugh devotes considerable attention to a description of the Board of War Communications which was charged by the President with the responsibility of determining, coördinating, and preparing plans for national defense, including the needs of the armed forces, other government agencies, industry, and civilian activities for communication facilities of all kinds. Representatives of the Bell system are on five of the technical committees of this board.

COGNIZANT of the shortage of certain vital materials — especially those whose sources were daily being affected by the war, Bell Laboratories, the Western Electric Company, and AT&T have been devoting much of their ability and resources to the maximum saving of such precious articles as tin, rubber, aluminum, and zinc. Mr. McHugh points out, however, that despite every effort to conserve materials

> the war-time demands of the nation for new communication facilities have required a very large construction program during the war-time demands of the nation for metropolitan Washington, D. C., the Chesapeake & Potomac Telephone Company has

added more new plant in the last twelve months, largely to meet the expanding needs of the government, than existed in the city at the close of World War I.

The telephone companies have worked in close association with the former National Defense Advisory Commission, the former Office of Production Management, and the present communications division of the War Production Board in order to avoid the many problems involved in obtaining the materials needed for construction and repair. Mr. McHugh's report states:

> The attack on Pearl Harbor had the force of an explosion within the system. From the first news I had that bleak Sunday afternoon until the small hours of the next morning, I was on the telephone almost continuously. Mr. Gifford and hundreds of executives and administrative officials of the system had similar experiences. The government—especially Army and Navy officials—discussed with us many urgent features of our operations.
>
> Local and long-distance traffic on the West coast jumped tremendously. The toll traffic all over the country, particularly over the transcontinental routes and into and out of Washington, soared to new and all-time highs. The army of telephone workers had only to know that they were needed. Telephone operators rushed to central offices to man the switchboards. Plant forces jumped into action. The Bell system was in the war!
>
> The first call I received that Sunday afternoon was a request that all calls in and out of FBI offices throughout the United States be given precedence. That message was flashed immediately by our headquarters to all of the operating units of the Bell system, in order that the fastest possible service might be given to this important agency of the government. Advance plans made it possible for Navy censors to move in on overseas circuits within a few hours.

THE report shows the volume, the number, and the complexity of the system's war activities since Pearl Harbor.

Telephone systems at Army camps and naval training stations were turned over to the companies to be maintained and operated; Bell system technical schools trained and are training soldiers to become installers, splicers, repairmen, and teletypewriter maintenance men, at the request of the United States Signal Corps; and Bell Laboratories have been engaged in the development of new tools of warfare involving communication techniques for the Army and Navy. The report states:

> No story of the system's war activities would be complete without some reference to the part its people are playing in the war. Up to November 15th, about 29,000 men from the system have gone into the armed services. Some of these men were called to active duty as members of the Army or Navy reserves to which they had belonged before the emergency. Many more have gone in via the normal routes of the Selective Service or regular enlistment.
>
> About 2,000 have volunteered for special service in the Signal Corps. Many of these are older men of considerable experience, often in administrative or supervisory positions, who have volunteered at the request of the Signal Corps to become commissioned officers or technicians in construction, maintenance, and operating units of the service, where their special knowledge and training can be of the greatest possible value.

The Bell system employees (more than 40,000 of them) remaining in civilian service are doing their part in the war effort over and above the faithful execution of their essential duties on the job. They have bought war bonds at the rate of $75,000,000 a year and have participated actively in the various civilian activities on the home front.

—E. M. P.

Excess Profits *versus* Rate Reductions

ARGUMENTS for and against proposed plans to divert excess utility earnings from the U. S. Treasury and into the patron's pocket are presented by *Telephony's* Washington correspondent in the January 9th issue. And it seems certain regulatory circles in Washington are in favor of this idea. They feel that the excess earnings of the utilities should not be turned over to the government as excess profits taxes, but should go to the ratepayer in the form

of reduced rates. But Mr. Washington Correspondent states:

> . . . Either way, the utility loses financially, of course. But the offsetting advantage in favor of the rate reduction alternative, is that the utility should feel fine afterwards—in terms of good public relations. Santa Claus always was a popular fellow.

He points out that if the excess earnings were paid over in the form of excess profits taxes, "nobody would win but the Federal taxpayer in general—a personality so abstract and anonymous as to be meaningless in terms of individual recognition."

On the other hand, if these excess earnings were earmarked for Uncle Sam, the utility ratepayer would have, so they say, "a grudge against his utility for even being caught in the position of having to pay excess profits taxes."

HOWEVER, the term "excess profits" is a "trouble-making, insidious" phrase, the author states. And here's his reason:

> . . . Whoever thought up that term in the first place certainly made a 10-strike for the government against the taxpayer. The very sound of the phrase calls up to the average man in the street who pays few income taxes (and until recently perhaps paid none at all) visions of a tight-fisted, money-gouging corporation, so bloated with ill-gotten gains that it has to disgorge an unholy slice of it to the Federal Treasury in the form of excess profits taxes—so that the government will let it keep the rest of its spoils.
>
> During a war period especially there is something unconscionable about the very thought of anybody making so much money. Reminds us of the "profiteers" of the last war.

The truth of the matter, he goes on to explain, is that "excess profits" tax is merely a bookkeeping term. It refers to a tax on business profits which are over and above the average business earnings over a certain period.

THE article cites two examples where rate reductions were put into effect and payment of the excess profits tax was avoided. In the case of the Arkansas Power & Light Company, the Arkansas Corporation Commission recently ordered that a retroactive refund of $625,000 be made to its customers. This decision was upheld in court.

The Michigan Public Utilities Commission is now considering a petition by the city of Detroit to the effect that Detroit Edison should reduce rates by more than $7,000,000. The article continues:

> So far, the attitude of the Federal Communications Commission on this subject has not been revealed. But the Federal Power Commission, in the Panhandle Eastern Pipe Line Case several weeks ago, indicated a course of action (charging so-called "abnormal" taxes against corporate surplus) which would tend to bring about similar results.
>
> On the other hand, the Civil Aeronautics Board, which is the Federal regulatory authority for commercial airlines (corresponding to the FCC and the FPC in their respective regulatory fields), has taken a contrary view. Last November, it fixed the rate paid by the government for air mail to the American Airlines, Inc., in such a manner as to produce an expected amount of so-called excess profits subject to tax. A single member of the board—Commissioner Harllee Branch—wrote a dissenting opinion on that point.

In a similar case, involving the Pennsylvania Central Airlines, an opposing view was taken by another member of the same Civil Aeronautics Board. He maintained that the airlines are performing a service which is essentially the same in peace as in war. And, therefore, that any excess profits gained should be canceled through taxes.

THE article, in concluding, presents the following disadvantages the proposed plans present:

> (1) The normal rate structure is depressed for a purely temporary purpose with no assurance that it can ever be put back again when normal operating conditions return. (2) It is unsound tax practice because it not only defeats the very purpose of the excess profits tax, but also unfairly discriminates in favor of the utility ratepayer as against the Federal taxpayer. (3) It is unsound economic regulation, especially during war, since it tends to augment an already excessive mass purchasing power and thereby promote inflation.

It would seem then that only the most public relations-minded executive would find the plans fruitful.

The March of Events

Power Expansion Report

A SPECIAL report on electric power expansion, which should settle an argument precipitated by the public power advocates, was expected at the White House last month. President Roosevelt ordered the special report because of a conflict between the War Production Board and the Federal Power Commission over the war-time electric power requirements. Behind-the-scenes flare-ups between the two agencies have been frequent and heated.

The FPC believes the WPB is too conservative in its estimate of war-time power needs and also protests against priority derating of numerous Federal power projects. The President wants the facts as a basis for settlement of the differences so that the power program can move forward without interruption.

The report was being composed by a secret study committee. Two are representatives of the War Production Board, which recently slashed more than 1,000,000 kilowatts of Federal projects from the previously approved building program. One is a representative of the Federal Power Commission, whose chairman, Leland Olds, has argued for more expansion of generating facilities and also a greater participation of public projects in the program.

The fourth member is from the Tennessee Valley Authority. It is understood that its representation will have a more or less controlling status because of TVA's impartial attitude in the dispute.

Absent from the committee was a representative for the Interior Department's power branch, which strongly resented the WPB priority orders suspending operations on the Federal projects.

One estimate of power capacity and demand (including nonpublic as well as public supply) was used by Donald M. Nelson, WPB chief, in a radio address on January 18th. These figures, which may be considered as part of the forthcoming statistical agreement between WPB and FPC were as follows:

Installed capacity at the end of 1940, 51,000,000 kilowatts; total power produced, 180,000,000,000 kilowatt hours. Installed capacity, end of 1941, 54,000,000 kilowatts; power produced, 218,000,000,000 kilowatt hours. Installed capacity, end of 1942, 57,000,000 kilowatts; power produced, 232,000,000,000 kilowatt hours; in short, an increase of 12 per cent in capacity and an increase of 30 per cent in generation, which is attributed mostly to better utilization of available facilities. The estimate for 1943 is for 4,000,000 kilowatts additional capacity, and a power production of 280,000,000,000 kilowatt hours.

Rural Power Restrictions Eased

THE War Production Board has granted public utility companies, as well as rural electric coöperatives, authority to use materials now on hand to extend their service to farms under certain conditions for the purpose of increasing food production. The order took the form of an amendment to Utilities Repair and Maintenance Order P-46, authorizing electric utilities to make extensions of less than 5,000 feet to specified food-producing farms, upon certification of eligibility by the local Department of Agriculture war county boards.

Special co-op interest was disclosed on January 14th by Clyde Ellis of Bentonville, Arkansas, general manager of the National Rural Electric Coöperative Association, who was in St. Louis, Missouri, last month to arrange for the organization's national convention.

"Just today [January 14th] we received word from a WPB official that coöperatives can make use of new and used materials with which to extend their service. We expect 20,000 farms now without central power house electricity to be connected to coöperative lines each month for the next six months. The electricity will be used to increase production of food for the war program," he said.

All material these coöperatives had on hand was frozen by a WPB order last July.

WPB Production Head Quits

WAR Production Chief Donald M. Nelson on January 18th announced his acceptance of the resignation of Ernest Kanzler as director general for operations of the War Production Board on grounds of ill health.

Curtis E. Calder, a member of the board of governors of the New York Stock Exchange and president of the American & Foreign Power Company, has been picked to succeed Kanzler with formal announcement expected soon, it was learned.

Resignation of Kanzler marked the departure of a man who was Nelson's first major appointment—to head the automotive

branch in January, 1942. Kanzler supervised conversion of the giant auto industry to war production.

As WPB director general for operations, he was in charge of industrial bureaus, including the utilities and construction bureau, which includes the WPB Power Division and Communications Equipment Division.

No TVA Fund Recommended

No appropriation was recommended for the Tennessee Valley Authority for the fiscal year beginning July 1st in the President's budget message to Congress on January 11th. Instead the TVA, with its series of dams and network of power lines supplying part of the Southeast, was given authority to utilize unexpended balances from its last year's appropriation of $136,100,000, plus its receipts from all other sources, such as the sale of power.

The year's program of the TVA would include the continued construction of the Kentucky dam at Gilbertsville, Kentucky; Watts Bar dam and steam plant; Fort Loudon dam, including an extension to bring the waters of the Little Tennessee river within the pool of that project; Cherokee dam; Apalachia dam, Ocoee dam No. 3, Fontana dam; South Holston dam, Watauga dam; Douglas dam; an additional unit at the Sheffield steam plant and a system of public use navigation terminals on the Tennessee river; and a fertilizer and elemental phosphorus manufacturing plant at or near Mobile, Alabama.

It was estimated that the TVA would spend during the present fiscal year $170,725,914 compared with an actual expenditure of $206,565,842 during the previous fiscal year. Expenses during the forthcoming fiscal year were estimated at $107,161,022.

Power Director Appointed

War Production Board Chairman Donald M. Nelson on January 22nd announced the creation of the Office of Power Director with the appointment of J. A. Krug as its head to take over complete responsibility within the War Production Board for electric power, gas, water, and communications.

The Office of Power Director will include the present WPB Power Division and the Communications Equipment Division. Also transferred to the Office of Power Director are the functions and responsibilities of the facilities bureau and the resources agencies, in so far as they deal with electric power, gas, water, and communications. Mr. Nelson said that on all policy matters the power director will report directly to him, while reporting as to administrative matters to the program vice chairman.

All WPB orders affecting the utilities will be issued by the power director. Pursuant to determinations of the requirements committee, his authority includes approval of projects, allocation of materials and critical components, within the power and communications fields, and allocation and rationing of utility services.

Asks Property Return

The Puerto Rico Railway, Light & Power Company on January 9th began suit in the Federal court at San Juan for restitution of its property, power plant, and business, which President Roosevelt, acting under the Second War Powers Act, ordered reëxpropriated by the Federal Works Administration, after the circuit court in Boston had ruled that the Lanham Act, which first was invoked by the FWA, could not be applied, and the properties were returned.

United States District Attorney Phillip F. Herrick and Joseph MacPherson, counsel for the lands division of the Department of Justice, appeared for the government and requested compliance with the presidential order, and dismissal of the circuit court's mandate.

Arkansas

Wins Natural Gas Suit

The state revenue department, defendant in a suit by the Harding Glass Company and Twin City Pipe Line Company to prevent collection of the sales tax on natural gas used in the manufacture of window glass, won a dismissal of the suit in Pulaski Chancery Court last month.

Chancellor Dodge overruled the companies' contention that the gas used in glass manufacture actually became a part of the finished product in the heating process.

The state revenue department's suit, brought in 1940, involved approximately $10,000 in taxes, which have been paid under protest.

Leffel Gentry, attorney for the revenue department, said the case would have a bearing on collections in other manufacturing industries where the contention might be made the fuel became a part of the finished product.

May Reduce Fund

The state legislature probably will be asked to perform a rare operation of the state utilities commission's 1943-45 appropriation and remove $15,000 from a fund currently known as special services.

When the commission's proposed budget for the next biennium was fixed at $131,000, as compared to the 1941-43 appropriation of $146,000, the only change was a reduction of the special service fund from $25,000 to $10,000 a year.

This cut was said to indicate the commission does not contemplate an investigation of telephone rates in the next two years. Specialists would be required for such an inquiry and the cost would be undoubtedly more than $10,000. Half of that amount has been dedicated to legal services.

The fund has been used in the last two years for legal expense, fees to two engineering firms engaged to survey the south Arkansas "sour gas" fields, and the expense of a special accountant to set up a uniform system of accounts for electric, gas, water, and telephone companies.

The budget includes $5,000 salaries for three commissioners, a chief engineer, and a chief accountant; $3,600 each for assistants to the chief engineer and accountant; $3,000 each for five senior engineers and two senior cost accountants; and $2,400 each for one secretary, eight junior engineers, and five senior accountants.

California

PG&E Gets NLRB Orders

THE Pacific Gas and Electric Company was directed last month to avoid interference with employees' organizations. The company was also ordered to withdraw recognition of two of its unions—California Gas & Electric Employees' Union and Western Utility Employees' Union—because they were found to be dominated by the company.

Orders for the change were received by Mrs. Alice M. Rosseter, San Francisco regional director of the National Labor Relations Board. They were a result of hearings held by the NLRB at the request of the CIO and the AFL.

Specific organizations making request for the hearings were the CIO's Utility Workers Organizing Committee and the AFL's International Brotherhood of Electrical Workers.

Commission President Elected

FORMER Congressman Franck Havenner last month was elected as the 1943 president of the state railroad commission, succeeding Carl C. Baker.

Havenner has been a member of the commission for two years. He received his original appointment from Governor Olson. He has four more years remaining of his term.

In taking the executive commission post, Havenner said his present interest would be problems created by the war with special attention to transportation problems.

Frank W. Clark was recently appointed to the commission to succeed Ray L. Riley, whose term expired.

District of Columbia

Heating Gas Ban Upheld

JUSTICE F. Dickinson Letts of the district court on January 7th upheld the War Production Board orders which denied gas for heating to fifty residents of the River Terrace area in northeast Washington.

The WPB immediately announced that these people would be allowed to have gas until their furnaces have been converted to burn coal. The materials for conversion, said the WPB, are available.

The WPB last year forbade delivery of gas for heating to houses under construction, unless their foundations had been completed by March 1, 1942. The "footings," or basement floors, of the houses in question were poured in February, 1942, and the residents claimed this entitled them to get gas under the WPB order.

However, the WPB declared that a foundation was more than just a footing, that foundations were not complete unless the walls were built up to the first-floor joists. Justice Letts said the WPB definition was reasonable and refused to grant the injunction which was asked against the WPB.

The dispute had been in the courts for eleven months.

Book Changes Approved

OVER the protest of Commissioner Hankin, the public utilities commission last month authorized the Capital Transit Company to increase its rates of accrual for depreciation for company equipment and plant, retroactive for the entire past year.

Simultaneously, it directed the company to decrease by $8,000,000 its own bookkeeping account for road and equipment, in keeping with a plan recently submitted by the company.

The orders were issued by James H. Flanagan, commission chairman, and Engineer Commissioner Charles W. Kutz. As to an

increase in depreciation accruals—bookkeeping accounting of funds set aside for replacement of property worn out in public service, Mr. Hankin protested that he could not agree because the commission had not held a formal hearing and because he said the agency could not know the facts for certain.

The second order of the commission, approving the company's request for an adjustment of its own plant, by a reduction of $8,000,000 in its claim of value as to road and equipment account, was protested by Mr. Hankin on the grounds that there appeared to be no reason for "this hasty action" and that he did not know whether the action was justified. These highly technical matters had been under discussion for some weeks between the commission and its staff and officials of the company. In its first order, the commission approved a request of the company filed December 9th, and modified December 31st, asking for an increase in rates of accrual of depreciation for rolling stock and other company equipment.

Illinois

River Bus Line Expected

ESTABLISHMENT of a river bus line on the Chicago river from Adams street to Michigan avenue, as a supplement to Chicago's curtailed transportation system, appeared certain recently after a meeting of a city council subcommittee in which the Coast Guard displayed a change of heart regarding the plan.

Lieutenant Commander A. F. Glaza, Coast Guard captain of the port, who had previously listed numerous Federal regulations which he said made the plan impossible, told the subcommittee that several of the regulations could be waived. Thus, the new bus line can be put into operation, he said.

Commander Glaza gave approval to a speed of 5 miles an hour. Among regulations which can be waived, he said, are those requiring passengers to carry elaborate Coast Guard identification cards and to have any packages they are carrying opened and inspected. It was assumed a regulation preventing enemy aliens from boarding the boats also would be lifted.

Indiana

Commission Head Named

GOVERNOR Henry F. Schricker on January 13th announced appointment of George N. Beamer, South Bend, former attorney general, as a member and chairman of the state public service commission to succeed Fred F. Eichhorn, Gary, who resigned to reënter law practice in his home city.

Mr. Beamer, who completed a 2-year appointive term as attorney general early last month, will serve the remainder of the term of Mr. Eichhorn, which runs until July, 1945. Mr. Beamer was the Democratic nominee to succeed himself as attorney general at the November election, losing in the Republican landslide. Other members of the commission who will serve with Mr. Beamer are William A. Stuckey, Indianapolis, a Democrat, and George Barnard, New Castle, a Republican.

Kentucky

Strike Reported Averted

THREAT of a strike in the municipally owned and operated utility plant at Owensboro was recently averted after three weeks of negotiations which verged on a tie-up of the city's power and water systems, William E. Fredenberger, international representative of the Brotherhood of Firemen, Oilers, and Helpers (AFL), said in Louisville.

Fredenberger, who returned from Owensboro after a meeting with the fifty-six workers who had voted the walkout a week before Christmas, said the employees had agreed to put into operation a second turbine generating unit to increase the plant's power output. Excess power will be sold to the Kentucky Utilities Company for distribution elsewhere.

Efforts to have the War Labor Board, Governor Keen Johnson, and others intercede in the dispute between the Owensboro workers and municipal officials failed, and the workers accepted the company's 7½ per cent increase in pay, which they previously had termed "inadequate."

Meter Reading Changed

A MAN-POWER shortage is causing the Louisville Gas & Electric Company to read

meters every two months, the company recently notified customers. In the alternate month an estimated bill will be sent and in the ensuing month the required adjustment will be made. The meters were read in January. February will be skipped.

Louisiana

Governor Asks Help

GOVERNOR Sam Jones said recently he was asking coöperation from all local governing bodies to decline to issue permission for laying of gas pipe lines through public lands in conformity with the declared state public policy against permitting further piping of gas from the state.

The state legislature in 1942 adopted a resolution directing the state's officials to oppose as contrary to public policy any applications for construction of new pipe lines, saying that natural gas should be conserved.

Governor Jones said he was preparing letters to be sent to parish police juries, school boards, levee boards, and similar agencies with custody over publicly owned lands to refuse permission for laying pipe lines thereon.

The state has filed a petition of intervention in a case before the Federal Power Commission regarding an application of the Tennessee Gas & Transmission Company, Inc., to build a gas pipe line from southwest Louisiana fields to serve industrial plants in Tennessee and Alabama.

Jones and other state officials planned to be on hand in person to oppose actively the petition at a hearing before the FPC in Nashville, Tennessee, beginning late last month.

Massachusetts

Gas Rationing Possible

RATIONING of illuminating gas in the near future was described as a possibility by Chairman Carroll L. Meins of the state public utilities commission recently.

Meins, after issuing a plea to the public to reduce voluntarily its consumption of gas for fuel, told newsmen that John E. Buckley, state director of gas, electric, and water utilities, had just returned from Washington where, he said, a gas limitation order was being worked out. Chairman Meins indicated that certain types of contract users, plants with other means of getting fuel, and commercial and industrial customers—other than essential users—would feel the effect of any limitation order before the householder.

Michigan

Edison Rates Fair

DETROIT Edison Company rates for electricity should not be reduced because operating costs may rise rapidly during the next few months, Professor Henry E. Riggs, honorary professor of civil engineering at the University of Michigan, believes.

Testifying as an expert witness for Edison before the state public service commission in the city of Detroit's fight for a rate reduction, Professor Riggs recently described present conditions as affecting labor and materials costs as the same as during World War I.

"Labor rates are frozen for the moment," he said, "but a freeze today does not mean they won't go up next week. We are in for two or three more years of war, and we don't know what's coming. I do not believe Detroit Edison Company rates are excessive. Costs are going up."

Professor Riggs produced figures on costs of reproducing the company's plant, which showed it worth $388,000,000, based on average prices over the last five years and $428,000,000 based on spot prices July 1, 1942.

Objection to Professor Riggs' testimony and exhibits prepared under his direction was placed in the record by James H. Lee, assistant corporation counsel. The city of Dearborn and Michigan Manufacturers Association, which have joined the city of Detroit in demanding rate reductions, also asked that Professor Riggs' testimony and exhibits be excluded.

The city's demand for rate reductions is based on the company's earning an excess profit of $8,000,000 in 1942, of which the Federal government will take 81 per cent. The city asserts that rates should be based on costs of service, including a fair return on capital stock. The company asserts that the cost of reproducing its equipment should be considered.

The Detroit Edison Company has agreed to supply the city of Detroit with detailed in-

formation about the "intangible property" item in the list of assets on which the company maintains its earnings should be based.

The company values this item at $7,245,526, including $926,409 for organization work that made it a going concern, $50,495 for franchises and consents, and $6,268,622 for electrical plant acquisition adjustments.

Minnesota

Strikers Return

STRIKING workmen who snapped off electric light, power, and water from the Moorhead municipal plant early the morning of January 12th agreed late the same day to return to work pending arbitration of their differences.

Plant officials said that operations would be resumed within an hour and a half after the men returned to work. The fifteen members of the electrical union involved voted to end the strike after Governor Harold Stassen agreed to appoint a 3-man committee to adjust the differences over wages and hours.

Fare Hearing Delayed

THE street-car rate hearing before the state railroad and warehouse commission was postponed on January 12th to February 15th on motion of counsel for the street railway company.

Pierce Butler, representing the St. Paul Street Railway Company, and James Dorsey, representing the Minneapolis Street Railway Company, told the commission that complete figures on earnings for 1942 would not be available until the end of the month.

The February 15th date was set when company representatives asked two weeks to study the figures. The hearing last month was the outgrowth of the fare increase granted the company a year ago, when the price of 6 tokens was raised from 45 to 50 cents.

It was stipulated at that time that continuance of the new rate would be considered at the end of twelve months.

The St. Paul city council has asked for a reduction on the grounds that the revenues of the company have increased in the meantime because of gas rationing.

Missouri

Sale to Coöperative Fought

FOURTEEN utility companies last month charged the Rural Electrification Administration is trying to "socialize the electric industry of Missouri."

The utilities filed with the state public service commission briefs opposing sale of the Missouri Electric Power Company to the Sho-Me Coöperative, a new corporation representing 31 Missouri coöperatives and financed by Federal REA loans. The commission last December took under advisement the application for approval of the purchase after holding hearings.

"The acquisition of electric utility properties by REA coöperatives and the building of duplicative plants and systems," the utilities' brief said, "all to be financed from the Treasury of the United States, is certain to cause disruption of the integrated electric utility business of the state. No matter how strenuously REA may try to becloud the issue, the ultimate plan of REA is to socialize the electric industry of Missouri as has been done in Nebraska, Tennessee, and other states."

Nebraska

Lighting Cut Protested

A RESOLUTION adopted by the board of managers of the Nebraska public power system voiced strong protests against a proposal of the War Production Board to limit window lighting in the Columbus area.

Signers of the resolution, sent to Nebraska's congressional delegation, were Harold Kramer, for the Loup River Public Power District; Gerald Gentleman, Platte Valley Public Power and Irrigation District; George E. Johnson, Central Nebraska Public Power and Irrigation District. They contended the three power systems of the state have 50,000 kilowatts of excess capacity independent of coal, oil, or natural gas and the proposed restriction would cause a loss of revenue to the system.

The resolution says the War Production Board "has not located war plants in this state to consume this excess capacity and we have no information that it does propose to do so." The ban would affect signs, store displays, decorative lighting, and "white ways."

Inspection Bill Prepared

FACED by the fact that a number of the government-financed rural electrification districts in the state have refused to permit inspection by the state fire marshal of wiring and insulation, a bill was reported recently to have been prepared empowering that official to set up standards and to require conformity therewith. Any person or corporation that refuses to permit inspection or which does not remove condemned equipment is subject to a fine. The marshal is empowered to fix an inspection fee, uniform for all areas.

New York

Face Oil Shutdown

THE state public service commission last month sought the help of the Petroleum Administration for War in shutting down the municipal electric plants in Freeport and Rockville Centre, Long Island, as a temporary measure for saving heavy fuel oil. Both communities, according to Milo R. Maltbie, chairman of the commission, can be supplied with electric power by the Long Island Lighting Company, which generates electricity with coal.

Following a conference with Herman B. Van Cleve, chief of the fuel oil section of the regional PAW office, Mr. Maltbie said recently that he expected the Federal agency would soon issue a directive to the two municipal plants to convert to coal.

Seeks Abolition of Transit Board

GOVERNOR Thomas E. Dewey announced on January 17th that he would send a special message to the state legislature, when it convenes January 18th, asking for the abolition of the state transit commission and the transfer of its functions to the public service commission.

A bill for that purpose would be introduced following the message, with assurance of early passage. It was estimated that the proposed change would save New York city $104,000 a year of mandatory expenses now saddled upon the city by the legislature, and would save the state $71,000 a year, making a total saving to the taxpayers of $175,000. The city would still have to bear a cost of about $300,000 a year for the work of the state public service commission in supervising operation of the city's transportation facilities.

Abolition of the transit commission would put an end to the $15,000-a-year jobs of William J. Fullen, of Manhattan, the chairman, whose term expires April 16, 1944; Commissioner M. Maldwin Fertig, of the Bronx, whose term expires April 16, 1950; and Commissioner Reuben L. Haskell, of Brooklyn, whose term expires April 16, 1947, as well as to the jobs of George H. Stover, counsel, also at $15,000 a year, and Mack Nomberg, secretary, at $7,500. An additional item of $3,500 for printing of reports makes up the $71,000 paid by the state.

City Utility Labor Board Named

A 5-MAN committee headed by Ignatius M. Wilkinson, dean of the Fordham Law School, was designated by Mayor LaGuardia last month "to study labor relations in the city's transit system and to submit findings and recommendations." The other members of the group are Professor Joseph P. Chamberlain of Columbia University, George W. Alger, attorney; Thomas E. Murray, former Federal receiver for the Interborough Rapid Transit Company; and Howard S. Cullman, vice chairman of the Port of New York Authority.

The mayor, declaring that the committee would be informed of the scope of its inquiry, said Mr. Wilkinson already had accepted appointment.

Mayor LaGuardia added that he was confident the other four would serve.

Appointment of the committee was in fulfillment of a tentative promise made by the mayor in his annual message to the city council early last month. He declared then that the entire question of labor relations between the board of transportation and the 32,000 civil service employees of the city's unified transit system should be examined.

Ohio

Power Saving Checked

GOVERNOR John W. Bricker said recently he would recommend to the state legislature that a committee be named to confer with Donald M. Nelson, chief of the War Production Board, to ascertain whether the state's figures or those compiled by the WPB concerning the conservation of electric energy are correct.

The most recent trend in the time controversy also was marked by a conference which the governor held last month with two Michigan state senators. The governor said he would present to the Michigan representatives information on the method by which the state

utilities commission collected data on the conservation of energy of Ohio power companies since the war-time schedule began last February.

Referring to his attempt to effect a reconciliation of the WPB figures with those of the state commission, the governor said: "I ought to suggest to the legislature that they name a committee to call upon Mr. Nelson to verify either his figures or ours. We have figures from the major companies in the state and I think we ought to make some attempt to ascertain what the actual facts are before anything is done."

Again citing the general report of Nelson showing that Ohio supposedly effected a saving of 100,000,000 kilowatt hours, the governor said this was only .8 of 1 per cent of the total annual consumption of 12,000,000,000 kilowatt hours.

Utility Merger Authorized

THE Federal Power Commission last month authorized the Cincinnati Gas & Electric Company to merge facilities with the Harrison Electric & Water Company, the Hamilton Service Company, and the Loveland Light & Water Company, subject to commission jurisdiction.

All four companies are wholly owned subsidiaries of the Columbia Gas & Electric Corporation and have their principal offices in Cincinnati, the Federal Power Commission said.

After the Harrison Company has sold its Indiana properties, the Hamilton, Harrison, and Loveland companies will be merged into Cincinnati Gas & Electric, with the last-named continuing as the surviving corporation, the commission said.

Pennsylvania

Court Asked to Deny Plea

THE state public utility commission announced recently it had asked the state superior court to refuse the petition of the Peoples Natural Gas Company for a supersedeas from a commission order directing the company to refund customers $2,146,958 and cut its rates by about $1,016,232 annually.

The commission said it denied allegations of the company, which serves domestic gas consumers in 13 Pennsylvania counties, that the commission's December 7th order effected a confiscation of its property.

In its answer to the company's petition for a supersedeas, the commission characterized as "irrelevant, immaterial, and impertinent" the utility's charges that neither the commission nor superior court required or suggested that any money collected under the present tariff should be secured or impounded in any way.

The court fixed a hearing for January 27th at Philadelphia.

Rhode Island

Rail Service Plea Renewed

A RESOLUTION again requesting Public Utilities Administrator Thomas A. Kennelly to call to the attention of the New York, New Haven & Hartford Railroad the necessity of resuming passenger service over the Providence and Bristol and the Willimantic lines of the railroad was passed by the state house of representatives last month.

Similar to a measure passed by the state assembly last year, except that the request was reiterated, the resolution directs Kennelly to urge the railroad to resume passenger travel "as a patriotic and expedient service to this state." Governor J. Howard McGrath, after conferences early in January with ODT officials in Washington, revealed that the ODT would send a representative to Rhode Island to make a personal survey of the Providence and Bristol line to determine if restoration of passenger service is possible.

Tennessee

Utility Bills Introduced

A $10,000,000 electric property deal embracing six upper east Tennessee counties was presaged on January 14th by the introduction in the senate and house of bills to create the "East Tennessee Utility District."

These measures, introduced by Senator Hubert Brooks of Washington and Representative J. D. Robinson, Jr., of Carter, set up a home grown TVA to take over the electric generating and distribution properties of the East Tennessee Light & Power Company, serving Washington, Sullivan, Carter, Greene, Unicoi,

and Johnson counties. The utility district embraces these counties but would not affect Kingsport since it is served by the Kingsport utilities.

Cities Service, under the Federal Holding Company Act, is preparing to divest itself of the East Tennessee Light & Power Company and the district is being set up, it was announced, to take over the properties.

Much of the financial negotiation has been completed for the deal, it was learned.

The bill sets up a board of commissioners in charge of the utility district, and names as the first board: D. B. Pence, Limestone, to serve to January 1, 1945; Charles E. Worley, Bluff City, to serve to January 1, 1946; Representative Carroll Reece, Johnson City, to serve to January 1, 1947.

The utility district bill provides the commissioners shall elect one of their number president, and a secretary-treasurer who is not a member of the board. As vacancies fall the board is to fill them, electing each new commissioner for a 4-year term.

Texas

Chain Store Taxes

THE state on January 6th won another round of its court battle to collect chain store taxes totaling $166,763.54 from three utility concerns as a group when the state supreme court refused the companies' application for writ of error.

The companies involved were Central Power & Light, Southwestern Gas & Electric, and West Texas Utilities. For the years 1936-1940, inclusive, they paid chain store taxes on three groups of stores which State Comptroller George Sheppard contended were subject to higher levies as a single group. The state claimed that majority stock ownership of the three companies was centralized and that they were subject to taxation as a unit.

The state won a $166,763.54 judgment in trial court, plus 6 per cent from the time of the judgment until paid.

In a similar suit, the state supreme court refused to grant an application for writ of error in Texas-New Mexico Utilities Company's attempt to recover $8,167.85 in chain store taxes paid to the comptroller.

Washington

Rates Cut Income

SEATTLE City Light income is under the figure forecast in 1936 by the late J. D. Ross, but the amount of power generated by the municipal utility is greater than the former lighting superintendent estimated, City Light officials said recently.

This situation was laid to large rate reductions that had the effect of stepping up the power output while reducing the amount of money taken from the consumer. Establishment of the "all electric rate" in Seattle homes using city power for electric ranges and water heaters was the greatest factor in upsetting the predictions of the "father of City Light," lighting officials said.

Arthur O. Olsen, City Light chief accountant who worked out the forecast figures with Ross, said it was figured in 1936 that revenue would increase 9 per cent a year. Up to then it had increased 10 per cent annually and 1 per cent was cut off to make the figures conservative.

Up to that time the load had doubled every five and one-half years.

Wisconsin

Commissioner Named

LYNN H. Ashley, Hudson attorney, on January 6th was named to the state public service commission by Governor Walter S. Goodland. Ashley succeeded Commissioner Robert A. Nixon, who resigned, and whose term would have expired in March.

Ashley's appointment must be confirmed by the state senate, and he could not take his $5,000-a-year job until the upper house approved his selection. If confirmed, Ashley will join Rueben Peterson and Weldon F. Whitney on the commission.

Ashley, born in Madison, received his education in the city schools of River Falls and at Carlton College, Northfield, Minnesota. He was graduated from the University of Minnesota Law School.

He was the Republican district attorney from St. Croix county in 1921 and 1922, and Republican member of the assembly from that county in 1929-30, during the administration of Governor Kohler.

The Latest Utility Rulings

Supreme Court Denies Power of State Commission to Fix Interstate Rates

A DECREE of a Federal District Court enjoining enforcement of orders of the Ohio commission instituting an investigation of wholesale rates charged for gas transported from another state has been affirmed by the Supreme Court. The court holds that, since the commission lacks power to fix rates retroactively to the date when the commission's inquiry began, it is barred by the Natural Gas Act from fixing such rates, regardless of any question as to what it might have done if a rate order had been entered before the enactment of the Natural Gas Act in 1938.

This controversy began when the Portsmouth Gas Company appealed to the commission from an ordinance rate. The commission could not fix distribution rates without proof as to charges for gas purchased from United Fuel Gas Company. Accordingly, in 1935, the commission ordered the wholesale company to present evidence on wholesale rates. United recognized the authority of the commission to compel it to produce evidence relevant to a determination of rates to be charged by Portsmouth Gas Company, but it denied the right of the commission to fix rates for the supply to the distributing company. The suit to restrain the commission was pending at the time of the enactment of the Natural Gas Act.

The court did not think it comported with the public interest to remit the controversy for explicit findings by the district court as to the power of the commission to fix rates retroactively. Considerations of equity required that the litigation be brought to an end as quickly as possible, since no state court ruling on local law could settle the Federal questions that necessarily remained. Although Ohio statutes give the commission authority to fix retroactive rates on appeal from a municipal ordinance, the statute explicitly gives the commission power to prescribe rates prospectively only in a proceeding on complaint against rates.

The case, the court ruled, could not be disposed of on the basis that would have governed had it come before the court in 1935. To inquire into the powers the commission had that year or any other year prior to enactment of the Natural Gas Act would be to ascertain an abstract question of law. The court continued:

> The question we are called upon to decide, and it is the only question, is whether the district court properly entered the decree under review. That decree was entered on January 16, 1942, after the enactment of the Natural Gas Act, and after United, in filing an amended bill of complaint, based its claim for relief upon that act. It is familiar doctrine that an appeal in an equity suit opens up inquiry as of the time of the ultimate decision. To decide this appeal on the basis of a legal situation that ceased to exist not only prior to the taking of this appeal but also before issue was finally joined in the district court, would be to make a gratuitous advisory judgment. It is the case that is here now that must be decided, and it must be decided on the basis of the circumstances that exist now.

It was said to be clear that Congress in enacting the Natural Gas Act meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the act, and local matters would be left to the state regulatory bodies. Congress contemplated a har-

monious, dual system of regulation of the natural gas industry—Federal and state regulatory bodies operating side by side, each active in its own sphere.

Admittedly the Natural Gas Act did not bar a state commission in the appropriate exercise of its jurisdiction from compelling the production of evidence relevant to a proceeding before it. These orders, however, went beyond this limited purpose. They undertook to assert a jurisdiction which the state body does not possess.

The Johnson Act was held to be inapplicable because the orders of the state commission "interfere with interstate commerce" to the extent that they constitute an attempt to regulate matters which Congress has lodged exclusively with the Federal Power Commission. Moreover, the appellant had exhausted all administrative remedies available to it before bringing suit. In a petition for rehearing it had requested the commission to modify its order so as to strike out those portions in conflict with the Federal act. *Public Utilities Commission of Ohio et al. v. United Fuel Gas Co. et al.*

Transportation Extension Denied On Account of War

THE term "public convenience and necessity" has an entirely different meaning in war time than it has in peace time and under normal conditions, declared the Colorado commission, in denying a petition for an extension of local transportation service. A request for an extension in the city of Denver was denied on the ground that the commission has no jurisdiction over operations in that city.

As to extension in a suburban community, the commission said:

> . . . the commission, however desirous it might be, and is, of providing better transportation facilities for the people of this rapidly developing suburban community, could come to no other conclusion than that public convenience and necessity were not shown, and the commission would not be warranted in requiring the establishment and maintenance of the proposed service under present conditions. Were times and conditions normal, the desires of the petitioners might be interpreted as evidence of public convenience and necessity, which might warrant the commission in granting the petition . . . All civilian convenience must be subordinated to the war effort, and considering scarcity of equipment, where civilian necessity is shown, no extensions of mass transportation service should be ordered; except as required in the war effort.
>
> It is common knowledge, and the evidence disclosed, that the mass transportation facilities in Denver and vicinity are taxed to their utmost, and the commission feels that it should not require any extensions of service unless public convenience and necessity, in view of its war-time definition, is shown.

Re Denver Tramway Corp. (Case No. 4901, Decision No. 20138).

Bondholders Not Entitled to Premium When Holding Company Liquidated under SEC Order

THE order of the Securities and Exchange Commission denying the right of debenture holders to be paid a premium in addition to principal and accrued interest on bonds of the United Light & Power Company, upon the dissolution of that corporation under a plan approved by the commission, has been affirmed by the circuit court of appeals, second circuit. The commission, according to the court, had the duty under § 11(b)(2) of the Holding Company Act to supervise the carrying out of its order of dissolution. How these bonds should be dealt with was one of the questions requiring decision and as

such was within the proper scope of a plan to be submitted to the commission under subsection (e) of that particular section.

Although the contract with the bondholders provided that the corporation should pay a premium if it should exercise its option to call the bonds before maturity, the contract rights flowed from debenture agreements contemplating as indispensable the continued existence of the corporation. Continued existence was made impossible through the commission's order.

Where, through no fault of either party, something necessary for the continued performance of a contract goes out of existence because of some unforeseen circumstance and none of the parties have assumed that risk, said the court, the contract is regarded as charged with the implied condition that if what is necessary to performance becomes unavailable, the contract is no longer binding and further performance is excused. This, it was said, is especially true where the essential existence of one of the parties to a contract has become illegal and impossible because contrary to a new concept of public policy which was unforeseeable when the contract was made. The court added:

> This involuntary destruction of the corporation deprived it of any freedom of choice except perhaps as to the cost of its funeral. It certainly was not in a position to elect to pay a premium to better its capital structure for continued business purposes. And it certainly was under no obligation to exercise its option to call the bonds if it had nothing to gain by so doing. That motive absent, it might well let the rights of those in interest be determined as though there had been no call option. The order under review was, accordingly, fair and reasonable to all parties in interest since it provided for the payment of the bonds in a way which discharged in full the contract obligations of the dissolved corporation.

New York Trust Co. et al. v. Securities and Exchange Commission et al. 131 F(2d) 274, affirming 42 PUR(NS) 193.

Rate Increase Authorized Subject to Notification under Price Control Act

AUTHORITY to increase telephone rates was granted by the Wisconsin commission upon a showing that a telephone company was operating at an annual deficit. The estimate of future net operating income, producing a 5 per cent return on net book value, was not considered unreasonable. Present rates were said to be generally lower than rates of telephone utilities of similar size and characteristics; costs of operation were likewise lower.

The order provided that the company cancel its present rates and rules applicable to service and put the new rates and rules in effect "subject to such notification with respect to the increase of rates as hereinafter authorized and prescribed, as may be required under the act of Congress approved October 2, 1942, known as Public Law 729—77th Congress, Chap. 578, 2nd Session." *Re Dodge County Telephone Co. (2-U-1873).*

Municipal Objection to Consolidation of Power Companies Overruled

A MERGER and consolidation of four affiliated electric companies, approved by the Massachusetts commission, were authorized by the Federal Power Commission upon a finding that there would be savings in operating expenses, which should redound ultimately to the benefit of ratepayers and investors, and that an agency acting as accounting and disbursing agent would be

eliminated, laying a foundation for dissolution of the holding company.

The city of Springfield had intervened and pressed the contentions that the companies' depreciation reserves were inadequate; that the merger would make effective regulation of rates more difficult; and that the merger would adversely affect the interests of the city, if it should undertake to municipalize the electric utility system within city limits, by increasing the amount of severance damages which the city might have to pay.

The commission did not consider it appropriate to delay the proceedings pending a detailed study of depreciation reserves. It was said:

> Where depreciation reserves are inadequate in substantial amount, proper adjustments should be made regardless of whether merger or other proceedings are in prospect. In the instant case, all of the applicant companies are wholly owned subsidiaries of the same holding company. The condition of the reserves is not impaired by the proposed merger. The interests of the security holders are not adversely affected, inasmuch as there are no outside stock interests in any of the applicant companies.

There was said to be some merit in the contention that effective regulation of rates would be made more difficult because the present accounting and corporate separation between the companies made it easier for any particular community to determine the reasonableness of rates. On the other hand, the commission was of the opinion that contracts for power and services between affiliated companies are of little assistance and may be a detriment in determining the reasonableness of rates to ultimate consumers.

The commission continued:

> The reasonableness of the terms of such contracts, in the light of all other intercorporate relations, must be determined. It would appear that the making of proper cost allocations among areas served by a consolidated company is little, if any, more difficult than determining the reasonableness of the allocations necessarily implicit in contracts among companies dealing with each other at less than arm's length.

Moreover, the Massachusetts Department of Public Utilities, in approving the merger, had imposed conditions to protect the city from any added rate-making difficulties which might flow from the merger.

The issue of severance damage was disposed of by including in the order a condition that, as stipulated, a claim for severance damages should be limited to a basis existing at the time of the consolidation. *Re Western Massachusetts Electric Co. et al. (Docket No. IT-5755, Opinion No. 85).*

Higher Depreciation Rates Established Because of War Conditions

A REQUEST by the Capital Transit Company for approval of higher rates for accrual of depreciation because of war conditions was granted by the District of Columbia commission. The reasons given to substantiate the request were summarized as follows:

> 1. For some time past the property and plant of the company have been subjected to unusual wear and tear because of the severe strains placed upon it arising from the demands made by war activities in the District of Columbia.
>
> 2. The company has been obliged to employ additional maintenance and operating personnel and to replace a large number of experienced men who have been called into the armed service of the United States, with the result that its plant is suffering to some extent because of the lesser average experience of operating and maintenance employees.
>
> 3. The difficulties being encountered in obtaining proper maintenance materials also aggravate the situation with respect to wear and tear on its property.

The commission found that the average use of street cars on a per car basis had increased by approximately 20 per cent over the average of street cars during the previous eight years. Similarly the use per bus had increased by about

10 per cent over the average use per bus for the previous eight years. The use of track by street cars had increased, the car miles per year operated over the track being 33⅓ per cent greater than the miles operated in 1941, which mileage was greater than any previous year since 1935. All these factors operate toward a more rapid depreciation of plant and equipment.

The commission said:

> The commission also finds that the present rates of accrual for depreciation were based upon operations of the transit system in normal times. There is no experience from which the commission can ascertain accurately the rate at which the property is depreciating under the present abnormal conditions. It is obvious to the commission that the rate of depreciation under existing conditions is higher than under normal conditions and that prudent and conservative management demands that provision for such increased depreciation should be made during the period of such greater use.

Commissioner Hankin dissented, stating that the commission had no facts which would enable it to determine whether the rates were adequate or inadequate, whether they should be increased or decreased. He thought that the request should be set for investigation and hearing. *Re Capital Transit Co. (Order No. 2468, PUC No. 3082).*

Appeal Right Upheld

A MOTOR contract carrier of freight was held by the supreme court of Louisiana not to be entitled to a certificate of convenience and necessity where it appeared that patrons along the route sought to be obtained were already being served by some fifteen carriers to which certificates had been issued previously by the commission. The evidence was inadequate clearly to show that public convenience and necessity would be materially promoted by the issuance of the new or additional certificate.

The court overruled exceptions based on the ground that the party appealing from the order had not timely filed an application for rehearing before the commission.

The court stated that the commission could not adopt any rule or regulation which would deprive a party in interest of the right to appeal to the court from the decree or order of the commission within ninety days as provided by § 5 of Art. 6 of the Constitution of 1921. *Texas & Pacific Railway Co. et al. v. Louisiana Public Service Commission et al. 10 So(2d) 641.*

Utility Control over Accounting for Abandoned Extension

SO far as the uniform system of accounts and the commission's power in connection therewith are concerned, the amount and manner in which a reserve for depreciation is set up are solely within the control of the utility, according to a decision of a New York court reversing a commission order. After abandonment of a gas extension the commission had ordered that a payment by the customer to the company should be debited to Contributions in Aid of Construction and a part credited to Reserve for Depreciation of Gas Plant in Service while the remainder should be credited to Unearned Surplus.

This extension had been constructed at a cost of $191.94, and the customer had made a payment of $382. It was agreed that the fund would belong to the company unless a stated amount of gas was purchased annually. At no time up to 1940, when the use of gas ceased, did the customer take that amount. The court said:

> The extension now being useless and aban-

doned, the entire cost . . . should be taken from the capital account and credited to Depreciation Reserve. The fact that, until 1940, under the contract it was unknown whose money would be used to pay for the extension militates against the theory of an annual straight-line depreciation charge against this item. According to the commission, any balance over depreciation should be placed in the "Unearned Surplus" account. This item is not within the description of that account contained in the Uniform System definition . . .

These two corporations dealt at arm's length. A credit balance at the end did not indicate improper action by Republic, for it is not illegal for a utility to make a profit. This profit should be recorded in the capital account 271, "Earned Surplus," which is defined, "This account shall include the balance either debit or credit of unappropriated surplus arising from earnings." The books of the utility are historical and should reflect what has happened. The commission is without power to use the Uniform System of Accounts to regulate the transactions. Should the accounts, kept honestly and historically, disclose irregularities within the field of control exercised by the commission, corrective and regulatory proceedings may be instituted.

Re Republic Light, Heat & Power Co. 37 NY Supp (2d) 947.

Other Important Rulings

THE circuit court of appeals, fifth circuit, upheld a Georgia statute requiring motor carriers to file with the commission a bond or policy of insurance for the protection of the public against injuries caused by the negligence of motor carriers, holding that the Georgia statute does not conflict with congressional regulation of carriers engaged in interstate commerce. *Acme Freight Lines, Inc., et al. v. Blackmon et al. 131 F(2d) 62.*

The North Dakota commission, although having power to supervise and regulate motor carriers so as to insure adequate transportation service to the territory traversed must, according to a ruling of the supreme court of that state, exercise this power so as to prevent substantial duplication of service between common carriers and lines of competing steam and electric railroads; and it is not the province of the commission substantially to substitute the operation of motor common carriers for existing transportation facilities. *Re Theel Bros. Rapid Transit Co. 6 NW(2d) 560.*

The supreme court of Nebraska reversed an order of the commission denying authority to discontinue agency service and to substitute caretaker service, in view of the amount of service required of an agent, the saving to be effected by substitution of a caretaker, the limited amount of shipping, the fact that no essential shipping service was discontinued, and the prospective inconvenience to the few shippers concerned. In reply to a contention that the income for freight charges resulted in profit the court said that this is an element to be considered along with all other elements but, assuming that the station was highly profitable, no rule of law or reason required the expenditure of earnings from a particular community in that community contrary to the requirements of reasonable service. *Re Thomson, 6 NW(2d) 607.*

A municipality which has been authorized to acquire an electric company's property may take possession of additions, betterments, and improvements which have become an integral part of the property after damages have been assessed but before one year after final judgment affirming the assessment, on payment of the assessed damages with compensation for the additions and improvements to be fixed and paid later, according to a decision of the appellate court of Indiana. *Public Service Co. of Indiana, Inc. v. Lebanon et al. 44 NE(2d) 526.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 46 PUR(NS) NUMBER 3

Points of Special Interest

Titles and Index

TITLES

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WISCONSIN PUBLIC SERVICE COMMISSION

Re Milwaukee Gas Light Company

[2-U-1807.]

Service, § 67 — Jurisdiction of Commission — Approval of rule — Restriction of service.

1. A rule filed by a gas utility permitting the utility to decline to serve new industrial, house-heating, and space-heating customers, or to supply increased amounts to existing industrial and space-heating, customers, is not simply an incidental provision with respect to a rate schedule, but sets forth terms under which service of certain individual customers could be curtailed or terminated, and therefore must have Commission approval before it may be put into effect by the utility, p. 130.

Service, § 332 — Gas — Rule restricting service — Effect of Federal board order.

2. A rule permitting a gas utility to decline to serve new industrial, house-heating, and space-heating customers, or to supply increased amounts to existing industrial and space heating customers, should be tentatively disapproved in view of the issuance of Limitation Order L–174 by the War Production Board making it possible for the utility to restrict gas service without the enforcement of such a rule, p. 131.

[November 23, 1942.]

APPLICATION *by gas company for authority to establish rule limiting acceptance of new business; rule disapproved without prejudice.*

By the COMMISSION: On January 7, 1942, Milwaukee Gas Light Company by letter requested approval of a rule permitting it to decline to serve new industrial, house-heating, and space-heating customers, or to supply increased amounts to existing industrial and space-heating customers. Subsequently, the company resubmitted the rule for filing on January 20, 1942, and took the position in its supporting brief that the rule would become effective upon filing and did not require approval by the Commission. However, despite its legal contention in respect of the necessity for Commission approval of the rule, the company has coöperated in every respect in furnishing the Commission with data and information as to the factual situation and in also furnishing brief and argument as to the legal matters concerned. The matter was docketed for formal hearing.

Hearings: At Madison on February 17th, before Commissioner W. F. Whitney and Examiner H. T. Ferguson, and on June 2nd before Examiner Ferguson.

APPEARANCES: Milwaukee Gas Light Company, applicant, by Bruno Rahn, President, and by Miller, Mack & Fairchild, Attorneys, by Frederic

Sammond, Milwaukee.

Interveners: City of Milwaukee, by Walter J. Mattison, City Attorney, Milwaukee, by Joseph L. Bednarek, Assistant City Attorney; city of West Allis, by John C. Doerfer, City Attorney, West Allis.

Objectors: Coal & Ice Drivers' and Helpers' Union, Local 257, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers; Coke and Gas Workers, Federal Labor Unions No. 18546 and No. 12018; International Association of Machinists, Lodge No. 66; Firemen and Oilers, Local 125; Wisconsin Drivers' Conference; Electrical Workers' Local 494; Operating Engineers Locals Nos. 311 and 309; Painters' Consolidated, Local 781; Coal Yard Employes' Federal Labor Union No. 19782; Boilermakers' and Helpers' Union, Local No. 107; all affiliated with the American Federation of Labor, by Padway & Goldberg, Attorneys Milwaukee, by A. G. Goldberg.

Of the Commission staff: George P. Steinmetz, Chief, engineering department; H. J. O'Leary, Chief, rates and research department, and Kenneth J. Jackson, of the rates and research department.

Briefs were filed by Miller, Mack & Fairchild for Milwaukee Gas Light Company and by Padway & Goldberg, in behalf of the Coal and Ice Drivers' and Helpers' Union, Local 257 et al.

The rule which the company proposed to enforce is as follows:

"The company shall not be obligated to supply increased service to industrial gas service customers and industrial and/or commercial space-heating customers receiving service as of January 7, 1942, or to attach new industrial gas service customers and new house-heating and new industrial and/or commercial space-heating customers thereafter, if it appears that such increased use of service or new use of service will adversely affect the service of existing customers. If existing facilities will permit, the company may enter into written agreements with existing or new industrial customers to provide gas, subject to interruption during the months of November to March, inclusive, upon notice of twenty-four hours or more. The order of interruption shall be the reverse of the order of acquisition and the interruption shall continue until such a time as the company, in its opinion, is able to resume service without endangering service to other consumers. The order of resumption of service shall be the order of acquisition.

"The foregoing provision shall become effective January 7, 1942, and shall remain in effect until May 1, 1943, unless modified after approval of the Public Service Commission."

Considerable testimony and a number of exhibits were offered in support of the company's claim that such a restrictive rule was necessary and in the public interest.

[1] From the outset we have been of the opinion that such a rule must have Commission approval before it may be put into effect by the utility. We reached this conclusion because the proposed rule was not simply an incidental provision with respect to a rate schedule, but rather sets forth terms under which the service of certain individual customers could be curtailed or in fact terminated. Obviously, a rule which so circumscribed the com-

pany's statutory duty of service could not properly be put into effect without Commission approval.

The issuance of Limitation Order L–174 by the War Production Board on August 25th has made it possible for respondent to restrict gas service without the enforcement of the rule proposed by the company. Under the circumstances, therefore, it is unnecessary at this time to pass upon the reasonableness of the proposed rule. The rule as proposed will therefore be disapproved at this time without prejudice to the filing of an application for its approval at such time as the applicant may see fit, subsequent to the abrogation or modification of the restrictions.

[2] The Commission finds: That since Milwaukee Gas Light Company may restrict gas service pursuant to the provisions of War Production Board Limitation Order L–174, the restriction rule which it had proposed is not needed at this time and should therefore be tentatively disapproved.

ORDER

It is therefore *ordered:* That the restriction rule as filed by applicant and under consideration in this proceeding be and is hereby disapproved. without prejudice to the filing of a new application by Milwaukee Gas Light Company at any time hereafter subsequent to the abrogation or modification of Limitation Order L–174 by the War Production Board.

FEDERAL POWER COMMISSION

Re Pacific Power & Light Company

[Opinion No. 84, Docket No. IT-5611.]

Public utilities, § 73 — Status of electric company — Federal Power Act.

1. A company which owns and operates facilities used for the transmission of electric energy in interstate commerce and sells electric energy at wholesale in interstate commerce is a public utility within the meaning of that term as used in the Federal Power Act, p. 135.

Accounting, § 32 — Excess purchase price — Payment to parent company.

2. The excess amount paid by a power company to its parent company (owning all of its common stock and having complete control and domination) for acquisition of properties at a price in excess of actual cost to the parent company does not represent a bona fide cost, p. 135.

Accounting, § 32 — Write-up of plant — Property acquisition from parent — Fair value factor.

3. The excess over original cost of electric properties, paid to a parent company at the time it organized a wholly-owned and controlled subsidiary, is a write-up of electric plant and properly classifiable in Account 107, Electric Plant Adjustments, even though it is claimed that present fair value of the property fully supports the security structure; that is,

that alleged values have caught up with and absorbed the write-up, p. 135.

Accounting, § 56 — Disposition of write-up.

4. An amount representing a write-up and not a valid cost of property, classified in Account 107, Electric Plant Adjustments, was required to be disposed of by a charge against a special reserve set up because of transactions associated with transactions which gave rise to the write-up and by charging the balance in excess of such reserve to earned surplus, provided, however, that the company might charge all or any part thereof against a capital surplus properly created for such purpose, p. 138.

Accounting, § 14 — Under-retirement — Charge to surplus — Depreciation reserve — Separate department.

5. The amount of an under-retirement, representing the difference between book cost of nonelectric properties and a lesser amount at which they have been retired, should, to the extent that it exceeds the depreciation reserve for nonelectric properties, be transferred to earned surplus and not to depreciation reserve for electric properties, whether or not the depreciation reserve for electric properties may be sufficient to absorb the under-retirement, p. 140.

Accounting, § 29.1 — Organization expense.

6. The amount of expenditures incurred in organization, so far as it has been included in Account 100.5, Electric Plant Acquisition Adjustments, should be transferred to Account 301, Organization, within Account 100.1, Electric Plant in Service, p. 141.

Accounting, § 36 — Investment in stock.

7. An amount representing the cost of acquiring common capital stock in a "basket" transaction should be established in Account 111, Investment in Associated Companies, p. 141.

Accounting, § 21 — Unamortized debt discount and expense — Matured debt.

8. Unamortized debt discount and expense relating to an indebtedness which has matured and been replaced by a new bond issue should be charged to Earned Surplus, p. 142.

Accounting, § 21 — Unamortized debt discount and expense — Partly matured bonds.

9. A pro rata portion of the unamortized debt discount and expense relating to outstanding bonds the life of which has partly expired should be charged to Earned Surplus and there should be included in income account for subsequent years the proportionate part of the unamortized debt discount and expense applicable to such years until the entire amount is extinguished, p. 142.

Accounting, § 14 — Reinstatement after retirement — Amount of excessive retirement.

10. An amount representing the original cost of a generating station and canal, retired and charged to Depreciation Reserve at an amount predicated on reproduction values but subsequently discovered to be still in use, should be established in Account 110, Other Physical Property, and the amount in excess of cost should be transferred from Depreciation Reserve to Account 100.5, Electric Plant Acquisition Adjustments, p. 142.

Accounting, § 21 — Discount on preferred stock.

11. Discount on preferred stock never reflected on the books of a power company should be transferred from Account 100.5, Electric Plant Acquisition Adjustments, through Account 107, Electric Plant Adjustments, to Account 150, Discount on Capital Stock, p. 143.

Accounting, § 8 — Improper charges to production plant.

12. An amount representing interest accruals in excess of the amount applicable to the construction period and representing charges for labor and other items improperly charged to Plant Account should, to the extent that they have not been offset, be disposed of by a charge to Account 271, Earned Surplus, p. 143.

Accounting, § 29.1 — Organization costs — Property disposed of.

13. Costs incurred in the organization of another company which has been disposed of should be charged to Account 271, Earned Surplus, p. 143.

Accounting, § 24.1 — Intercompany payments — Profit to affiliates.

14. Services rendered to licensees and public utilities under the Federal Power Act by affiliates should be at cost, and all affiliated company profits included in fees and other charges should be removed from plant accounts, p. 143.

Accounting, § 24.1 — Intercompany payments — Charges to affiliates — Procedure as to adjustments.

15. Investigation and studies necessary to eliminate from plant accounts of an electric company amounts included as profits on fees to affiliates should be reserved for a future time, since it is more practical to examine the books and records of the holding company than affiliated service companies and make the necessary adjustments to all the public utility subsidiaries at one time rather than to make the necessary studies and adjustments as each arises, p. 143.

[November 24, 1942.]

INVESTIGATION *of accounts of public utility under Federal Power Act; accounting requirements determined.*

APPEARANCES: Laing, Gray & Smith, by John A. Laing and Francis F. Hill, for Pacific Power & Light Company; Reid & Priest, by N. H. Powell, and White & Case, by Adrian Foley and Richard H. Appert, for American Power & Light Company; George Slaff and Reuben Goldberg, for the Commission; Alvin A. Kurtz, for the Public Utilities Commissioner of Oregon; Harry C. Bowen, T. A. Martin, and A. J. Greer, for the Washington Department of Public Service.

By the COMMISSION: This proceeding arises under the Federal Power Act and relates to the Uniform System of Accounts prescribed by the Federal Power Commission for public utilities and licensees and to the accounting entries which Pacific Power & Light Company (hereinafter sometimes referred to as "respondent" or "Pacific") is to make pursuant to this system of accounts.

History of the Proceedings

On April 16, 1940, we adopted an

order requiring Pacific to show cause why appropriate proceedings should not be instituted for failure to comply with Electric Plant Accounts Instruction 2–D[1] of our Uniform System of Accounts and our order of May 11, 1937, in respect thereto. Hearing was held in May, 1940, and, after testimony, adjourned by the presiding trial examiner, subject to the further order of the Commission.

On July 3, 1940, Pacific submitted its reclassification and original cost studies required by the foregoing Electric Plant Accounts Instruction. A field examination of the studies was made jointly by the staffs of this Commission and the Public Utilities Commissioner of Oregon, who prepared a joint report entitled, "Pacific Power & Light Company, Portland, Oregon, Report on the Reclassification and Original Cost Studies of Electric Plant as of January 1, 1937."

On July 1, 1941, we adopted an order transmitting the joint report to respondent and requiring it, among other things, to show cause why it should not make the accounting adjustments proposed in the report and submit appropriate plans for the disposition of amounts established in Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments. Hearings were held in Portland, Oregon, from September 29, 1941, to October 8, 1941.

Permission to intervene in the proceedings was granted to the Public Utilities Commissioner of Oregon, the Department of Public Service of the state of Washington, and American Power & Light Company (hereinafter sometimes referred to as "American"), Pacific's parent. The Honorable Ormond R. Bean, Public Utilities Commissioner of Oregon, presided jointly with our trial examiner in the proceedings.

The Issues

During the course of the staff examination of the books and records of Pacific, the company itself made further studies and analyses and immediately prior to the hearing submitted to the staffs of both Commissions certain revisions to its reclassification and original cost studies. These revisions, which were received in evidence at the hearing, brought Pacific into complete accord with the staffs of this Commission and the Oregon Commissioner as to the original cost of electric plant includible in Account 100.1, Electric Plant in Service ($19,466,147.54); Account 100.2, Electric Plant Leased to Others ($1,943,804.02); and Account 100.3, Construction Work in Progress ($87,828.95). The amounts as reclassified in Accounts 100.1 and 100.2 include fees paid by Pacific to American Power & Light Company, Electric Bond & Share Company, and Phoenix Utility Company, all associ-

[1] Electric Plant Accounts Instruction 2–D of the Uniform System of Accounts provides, p. 38:

"D. Not later than two years after the effective date of this system of accounts, each utility shall have completed the studies necessary for classifying its electric plant as of the effective date of this system of accounts in accordance with the accounts prescribed herein and it shall submit to the Commission the entries it proposes to make to carry out the provisions of this instruction. It shall submit also a comparative balance sheet showing the accounts and amounts appearing in its books as of the effective date of this system of accounts and the accounts and respective amounts as of the same date after the proposed entries shall have been made."

ated companies, pursuant to service contracts. These fees are permitted to remain tentatively in these accounts subject to such further consideration as may be deemed warranted at any time in the future.

The discussions herein relate to Pacific's revised reclassification and original cost study, and the disposition of amounts properly includible in Accounts 100.5 and 107. That study has not been entered in Pacific's books of account. We will order the study recorded and then adjusting entries made as hereinafter indicated so as to preserve appropriate accounting sequence.

The items upon which there have been no agreement present the following issues for our determination:

1. Whether the net amount of $4,121,981.41, being the excess of the recorded cost on the books of Pacific over actual cost to its parent, American, of property acquired from the latter, is a write-up;

2. The disposition of the amounts properly classifiable in Accounts 100.5 and 107;

3. Whether an amount of $612,013.78, classified in an adjustment account within Account 108, Other Utility Plant, should be charged to Account 250, Reserve for Depreciation, or to Account 271, Earned Surplus.

Jurisdiction

[1] Pacific concedes and the record shows that it owns and operates facilities used for the transmission of electric energy in interstate commerce and that it sells electric energy at wholesale in interstate commerce. It is, therefore, a "public utility" within the meaning of that term as used in the Federal Power Act.

The Write-up of Pacific's Plant Accounts

[2, 3] The staffs of the Federal Power Commission and of the Oregon Commissioner have classified a net amount of $4,121,981.41 in Account 107, Electric Plant Adjustments, as representing a write-up [2] of electric plant. Pacific contends that this amount should be classified in Account 100.5, Electric Plant Acquisition Adjustments.

It is undisputed that the amount in question originated as a result of two transactions between Pacific and its parent, American Power & Light Company, which took place in 1910 and 1930, and represents the excess of the net amount recorded by Pacific in respect to the properties transferred over the actual bona fide cost thereof to American.

Sometime near the close of the year 1909 and the early part of 1910, American Power & Light Company decided to move into the Pacific Northwest. Through the acquisition of capital stocks, it acquired control of certain utility properties in the Yakima Valley from the Northwest Light & Water Company and the Yakima Valley Power Company, and also the properties of Astoria Electric Company from Electric Bond & Share Company, which company had organized and controlled American. In

[2] The text of Account 107 reads, in part, as follows:

". . . Write-ups of electric plant prior to the effective date of this System of Accounts shall be recorded herein." *Uniform System of Accounts Prescribed for Public Utilities and Licensees, p. 19.*

March and April, 1910, American organized Yakima-Pasco Power Company and Columbia Power & Light Company, respectively, to take over the Yakima Valley Properties. Pacific concedes that American organized, owned, and controlled the Astoria, Columbia and Yakima-Pasco companies.

On June 16, 1910, American organized Pacific for the sole purpose of taking over and operating the properties of Astoria, Columbia, and Yakima-Pasco and in July, 1910, these properties were transferred by American to Pacific, together with $499,500 par value of stock of Walla Walla Valley Railway Company. In exchange therefor Pacific delivered to American all of its outstanding securities consisting of $1,250,000 par value preferred stock, $5,997,000 par value of common stock, $3,200,000 principal amount of first and refunding mortgage bonds and assumed certain underlying bonds and current liabilities. These properties which had cost American $6,154,251.34, were set up in Pacific's plant account at $10,900,000, or $4,745,748.66 [3] in excess of their actual cost to American. This $10,900,000 was nothing but a balancing figure to match par value and principal amount of securities which Pacific had issued to American, together with certain other minor obligations.

The record establishes beyond doubt that Pacific was at all times under the complete control and domination of American. American created Pacific, owned all of its common stock, officered it, capitalized it, and molded its actions at will. The board of directors of Pacific which, on July 23, 1910, "accepted" the offer of American for the transfer of the properties was composed of staff members or officers of American and its parent, Electric Bond & Share Company, and persons associated with Bond & Share's law firm, Simpson, Thacher & Bartlett. These directors had been elected by the sole common stockholder, American. The transaction between American and Pacific was veiled through the use of an intermediary, one Weld M. Stevens, associated with Simpson, Thacher & Bartlett.

The complete domination of the July 23, 1910, transfer by American and the voiceless position of Pacific is demonstrated by a letter dated the same day, to Guy W. Talbot, vice president of Pacific, from Sidney Z. Mitchell, chairman of American's board, in which it was stated:

"While we (American Power & Light Company) have elected the foregoing as officers in the West, we have not as yet elected any Western directors *because we want to keep the full Board here until we get through with all the votes relating to the issuance of bonds, etc. When this is all finished we will elect the permanent board, a majority of which will be in the West and an executive committee the majority of which will be here.*"

[3] The 1930 transaction between Pacific and American, in effect, reduced the 1910 excess of recorded cost over cost to American by $623,767.25, to the net amount of $4,121,981.41. In this transaction, American transferred to Pacific all of the properties of its wholly owned subsidiary, Inland Power & Light Company, with the exception of the Ariel, Wallowa Falls, and Cove hydroelectric projects, together with a large general office building in Portland, Oregon, and all of the outstanding shares of the common stock of Inland.

The complete absence of arm's-length bargaining and of independence of judgment is further demonstrated by a telegram dated June 16, 1910 (the very date of incorporation of Pacific), disclosing that the amount at which the properties were to be transferred to Pacific had been decided upon even before Pacific had been organized.

The only reasonable conclusion that can be drawn from all the facts concerning the 1910 transfer of property is that the transaction represented nothing more than American dealing with itself. The buyers and sellers were subject to common control and were mere tools of the holding company. No one in good conscience could make the claim that the excess of $4,121,981.41 represents actual, bona fide cost. Potomac Electric Power Co. v. Public Utilities Commission (DC Sup Ct) PUR1920C 326, 337; Re New York State Electric & Gas Corp. (NY) PUR1933D 264.

Pacific concedes that a direct mark-up of assets is a write-up, but it would have us believe that the same result accomplished through the device of a new corporate entity validates the excess over cost to the parent seller. We will not permit such a subterfuge to obscure the real transaction or its purpose.[4] We will look through the form to the substance.

In substance a fictitious increment was added to the accounts in a widely practiced but devious form:

". . . the same result (write-up) may be, and has been, obtained in a more subtle manner. This was particularly so where holding companies were concerned. Often a write-up was created by causing one company to convey its assets to another company at a price in excess of the figure at which they were bought by the selling company, both companies at the time of the transfer being subject to common control."[5]

This aptly describes the method followed by American.

If any doubt existed as to the true nature of the excess, an examination of the result to American would dispel it. Upon receipt of Pacific's securities, American sold the bonds and preferred stock to the public and thereby reimbursed itself for practically all of the initial cost of acquiring the properties transferred to Pacific. Through the retention of all of Pacific's common stock, *which it did not sell to the public,* American continued to own and control the properties at only a slight cost to itself. That was the very purpose of the transfer of the properties.

Pacific urges that the alleged "present fair value" of its property fully supports its security structure and therefore contends that the write-up should be permitted to remain in its

[4] "It is the substance of what they do, and not the form in which they clothe their transactions, which must afford the test." Electric Bond & Share Co. v. Securities and Exchange Commission (1938) 303 US 419, 440, 82 L ed 936, 22 PUR(NS) 465, 475, 58 S Ct 678.

[5] Report of the Committee on Corporate Finance of the National Association of Railroad and Utilities Commissioners, 1940, Appendix, p. 429. "Financing the Utility Property Account." The article was written by Judge Healy, formerly chief counsel for the Federal Trade Commission during its investigation of the financial practices of holding companies and their operating subsidiaries, and now a member of the Securities and Exchange Commission. As chief counsel of the FTC, Judge Healy had an opportunity to observe at close range the financial manipulations of holding companies which were exposed by that investigation and led to the enactment of the Public Utility Act of 1935.

plant account, or, to put it another way, that alleged values have caught up with and absorbed the write-ups and for that reason they should be left undisturbed. We were met by precisely such a contention, Re Northwestern Electric Company, another subsidiary of American Power & Light Company. We disposed of that contention there, saying (Opinion No. 56–A, April 14, 1942, 43 PUR(NS) 148, 150):

"It is asserted that we may not require the amortization of the $3,500,000 write-up, inasmuch as the alleged present fair value of the property and assets of the company exceeds the recorded amount for such property and assets, including this amount of $3,500,000. Reduced to its simplest terms, the company urges that its property account can be written up at will so long as it is able to support such manipulation by evidence of present fair value. By the same reasoning, it would follow that the plant accounts should be written down every time there is a decrease in plant values. The recognition in the plant accounts of declines in the so-called fair value of properties during the recent long and severe depression would probably have brought disaster to most public utilities. The amounts to be honestly and properly recorded in a utility's plant account should not be permitted to oscillate with the ebb and flow of economic tides.

"It is thus erroneous to permit the company's plant accounts to reflect changing 'values' of the nature offered in evidence here and to use such estimates of 'value' in lieu of valid cost. Adherence to such a principle, with its ever shifting plant values, would nullify the effective regulation of public utilities.

"Cost, not value, is the fundamental basis of accounting for public utility plant, as well as for plant of other enterprises. Our System of Accounts, like all accounting systems prescribed by regulatory agencies, is grounded firmly in the cost principle."

Our views on that subject are unchanged.

We find, therefore, that the amount of $4,121,981.41 is a write-up of electric plant and is properly classifiable in Account 107, Electric Plant Adjustments.

Disposition of the Write-up Classifiable in Account 107

[4] We have determined that the excess of $4,121,981.41 does not represent a valid cost of property and is properly classifiable in Account 107. The provisions of Account 107 require the amounts recorded therein to be disposed of as we may approve or direct. We hold that, in accordance with sound principles of accounting, the amounts should be expunged immediately. We now turn to a consideration of disposition.

In Opinion No. 69, adopted on December 9, 1941, 42 PUR(NS) 36, we approved, subject to certain conditions, the merger of Inland Power & Light Company with and into Pacific. In our order we required Pacific to set up a special reserve in the amount of $1,135,113.91, being an amount by which the cost to Inland of the net assets transferred to Pacific exceeded Pacific's cost of the stock of Inland. We said in Opinion No. 69 that this "reserve shall be used only for such purposes as this Commission may subse-

quently approve or direct." The transactions giving rise to the reserve are associated with transactions giving rise to the amount of $4,121,981.41 classifiable in Account 107. We accordingly find that $1,135,113.91 of the $4,121,981.41 should be charged to this special reserve.

We direct that the balance of $2,986,867.50 ($4,121,981.41 less $1,135,113.91) be charged to Earned Surplus; provided, however, that Pacific may at its election charge all or and part of the said $2,986,867.50 against a Capital Surplus properly created for such purpose.

Disposition of Amounts Classified in Account 100.5 Electric Plant Acquisition Adjustments

Pacific further classified an amount of $2,741,591.66 in Account 100.5, Electric Plant Acquisition Adjustments. The staffs concur in this adjustment. It represents the amount paid for operating units or systems over and above the original cost of such operating units or systems acquired. The issue is whether such amount should be amortized over a reasonable period of time or permitted to remain indefinitely in Account 100.5.[6] In Opinion No. 72, Re St. Croix Falls Minnesota Improv. Co. (1942) 43 PUR(NS) 1, we held that similar amounts should be amortized over a reasonable period of time.

In this case there is substantial accord between Pacific[7] and the staffs of this Commission and the Oregon Commissioner that the $2,741,591.66 represents payment for intangibles, and we so find. The record shows that it is not at all feasible, and probably not possible, to segregate the intangibles according to their nature. Good will, going value, franchise value, and monopoly value tend to merge.[8] They are all rooted in and are associated with prospective earning power. See *"The Law of Goodwill," G. A. D. Preinreich, 11 Acctg. Rev. 317, 326 (1936.)*

It is common knowledge that intangibles have questionable continuing value even in an unregulated industry. They should not be permitted to rest permanently in the accounts of a public utility, and the record of this case shows that the proper accounting treatment is to amortize them rapidly. The accepted and more desirable accounting practice, and the one which we feel should be adhered to by public utilities is set forth in *"A Statement of Accounting Principles":*

"The writing off of such intangible assets as good will evokes scarcely any protest, even when it is recognized that substantial good will exists. The general distrust of good will and the knowledge that it has been widely used to capitalize exaggerated expectations of future earnings leave an almost universal feeling that the balance sheet looks stronger without it. When

[6] Account 100.5 provides, among other things, that the amounts recorded therein with respect to each property acquisition "shall be depreciated, amortized, or otherwise disposed of, as the Commission may approve, or direct."

[7] Mr. Neill, treasurer of Pacific, testified that he thought it was "fair to say that the amount paid by American in excess of the original cost for those properties represented payment for intangibles."

[8] Mr. Neill also testified as follows:

Q. And all those types of intangible values, while it might be possible to segregate or pigeonhole them, they all tend to merge?

A. I think so. I thought at one time that I would try to divide them up, and do a little speculating; but I found it would be highly speculative and an impracticable thing to do.

actual consideration has been paid for good will, it should appear on the company's balance sheet long enough to create a record of the fact in the history of the company as presented in a series of its annual reports. After that, nobody seems to regret its disappearance when accomplished by methods which fully disclose the circumstances." (p. 14)[9]

The foregoing statement refers to good will, but the authors indicate it is the most important and the typical intangible asset, and that a discussion of it applies to similar intangibles.[10] The amounts involved herein have rested in the accounts ten to thirty years, which is more than adequate to create a record of the fact in the history of the company as contemplated by the foregoing quotation.

There is competent testimony of record that the amounts classified in Account 100.5 should be disposed of by annual charges to Account 537, Miscellaneous Amortization, over a period of ten or fifteen years. In view of the fact that the $2,741,591.66 represents excess over original cost of acquisitions approximately half of which were made as far back as 1910 and have been carried on Pacific's books all those years without any provision having been made, as good accounting practice demands, for writing off any part thereof, we find that an amortization period of ten years, beginning with 1942, is reasonable.

In disposing of the $2,741,591.66, we find that such charges should be made to Account 537, Miscellaneous Amortization. Re St. Croix Cases. Opinion No. 72 (1942) 43 PUR (NS) 1.

We find, therefore, that the amount classified in Account 100.5 represents payment for intangibles in excess of original cost and should be disposed of by equal annual charges over a period of ten years to Account 537, Miscellaneous Amortization, commencing with the year 1942.

Disposition of $612,013.78 Classified in an Adjustment Account within Account 108, Other Utility Plant

[5] In the course of the preparation of its reclassification and original cost studies, Pacific discovered that certain gas, water and railway properties had been retired at an aggregate amount of $612,013.78[11] less than the book cost. Pacific sought to correct this under-retirement by a charge to its depreciation reserves in the year 1940, although the balance existing in the company's depreciation reserves for nonelectric properties amounted to only $87,712.38.

The staffs of this Commission and the Oregon Commissioner contend that the 1940 charge to the depreciation reserve should be reversed, the amount of the under-retirement established in an adjustment account within Account 108, Other Utility Plant, and then disposed of by a charge of $87,712.38 to Account 250, Reserve for Depreciation, and a charge of $524,301.40 to Account 271, Earned Surplus. In other words, the Commissions' staffs contend the $524,301.40

[9] "A Statement of Accounting Principles," (1938) Sanders, Hatfield and Moore. Published by American Institute of Accountants.

[10] Ibid, pp. 65–69.

[11] Pacific first determined that the under-retirement amounted to $629,525.89 and the 1940 charge to the reserve was in that amount, but Pacific now concedes the correct adjustment, wherever it may be charged, is $612,013.78.

represents a loss on the sale of non-electric properties for which no provision existed in Pacific's depreciation reserve.

Pacific agrees that this amount of $524,301.40 is properly chargeable to Account 271, Earned Surplus, but contends its depreciation reserve for its electric property in the state of Washington is in excess of present requirements in an amount sufficient to absorb the under-retirement, and that a charge to that reserve is, in effect, a charge to surplus, since surplus is understated to the extent of the alleged overaccrual.

The alleged overadequacy of Pacific's depreciation reserve for electric properties in the state of Washington would not be determinative of the issue. There is good reason to hold that where a reserve has been provided for electric properties, chiefly by charges to electric expenses, the resulting reserve even though excessive should not be diverted in whole or in part to absorb a loss in some other department.

Assuming arguendo, however, that Pacific's contention is correct in principle, it has failed to demonstrate the reserve for the electric property in the state of Washington is excessive. On the contrary, the evidence would appear to support the conclusion that the reserve is not excessive. For example, though Pacific's electric systems in the states of Oregon and Washington are substantially similar in type, character, and condition, the balance in the Oregon reserve is approximately one and one-half times greater percentagewise than the balance in the reserve earmarked for the Washington properties. Yet it is the Washington rather than the Oregon reserve that is claimed to be excessive. Other facts in the record also tend to show the total depreciation reserve for electric properties is not excessive.

In the light of the evidence, we cannot acquiesce in a charge-off of the amount in issue to the depreciation reserve, except to the extent of $87,712.38 for which provision has been made.

We find, therefore, that the under-retirement should be corrected by requiring Pacific to transfer from Account 250 to Account 271, Earned Surplus, the amount of $524,301.40.

Accounting Adjustments Conceded by Pacific

(1) Additional Organization Expense

[6] An amount of $1,090.71 was included within Account 301, Organization, by the staffs prior to the hearing. The evidence offered at the hearing showed that in connection with the organization of Pacific expenditures of $5,650.39 were incurred. We find, therefore, than an additional amount of $4,559.68 should be established in Account 301, Organization, within Account 100.1, Electric Plant in Service, by transfer of such amount from Account 100.5, Electric Plant Acquisition Adjustments, in which latter account it has been included in Pacific's reclassification and original cost studies.

(2) Pacific's Investment in Stock of Inland Power & Light Company

[7] In 1930, Pacific acquired the common capital stock of Inland in a "basket" transaction and included the amount thereof in its plant accounts. The evidence shows that cost to Pacific of such stock was $232,002.22,

which amount Pacific has established in Account 111, Investment in Associated Companies. The adjustment is approved.

(3) Unamortized Debt Discount and Expense

[8, 9] Pacific reclassified $2,024,993.99 from its plant accounts to Account 140, Unamortized Debt Discount and Expense, representing discount and expense suffered by American in disposing of Pacific's bonds received in the 1910 and 1930 transactions. The record shows that an additional amount of $5,733.65, representing certain expenses incurred in connection with the bonds issued by Pacific to American in 1910, should be added to the foregoing amount, increasing it to $2,030,727.64. (Pacific should have established the $2,024,993.99, together with the amount of $5,733.65, in Account 107 pending Commission approval of the transfer to Account 140.)

Of the $2,030,727.64, an amount of $454,349.90 relates to an indebtedness which matured in 1930 and was replaced by a new bond issue. This amount should be charged off to Account 271, Earned Surplus.

The balance of $1,576,377.74 relates to Pacific's presently outstanding bonds which mature on August 1, 1955. As of December 31, 1941, 137/300 of the life of the bonds had expired, hence a pro rata portion of the unamortized debt discount and expense, $719,875.46, should be charged off at once to Account 271, Earned Surplus, and Pacific should include in its income account for 1942 and subsequent years the proportionate part of the unamortized debt discount and expense applicable to such years until the entire amount is extinguished.

We find that $5,733.65 should be transferred from Account 100.5 through Account 107, to Account 140; and $1,174,225.36 from Account 140 to Account 271, Earned Surplus.

(4) Capital Stock Expense

Pacific has classified an amount of $36,009.72, representing capital stock expense, in Account 151, Capital Stock Expense. While such amount should first have been established in Account 107, pending Commission approval of the transfer to Account 151, the result is correct and the adjustment is approved.

(5) Reinstatement of Fruitvale Canal

[10] In 1932, the Fruitvale generating station and canal were retired by Pacific. Subsequently it was discovered that the canal was still used to supply water for irrigation to a number of customers under contract. The estimated amount of the retirment was $229,166.81, the amount being predicated upon reproduction values. The staffs, pending a proper determination of cost, credited Account 250, Reserve for Depreciation, and reinstated the amount in Account 100.6, Electric Plant in Process of Reclassification.

The original cost of the canal property was determined to be $188,136.86, and Pacific established this amount in Account 110, Other Physical Property, with a corresponding credit to Account 250, Reserve for Depreciation, leaving charged to the reserve $41,029.95 (the difference between $229,166.81 and $188,136.86). The company erroneously reduced Ac-

count 100.5 by this excessive retirement of $41,029.95.

We find that the appropriate accounting procedure requires the establishment of $188,136.86 in Account 110, and a transfer of $41,029.95 from Account 250 to Account 100.5.

(6) Discount on Preferred Stock

[11] In the 1910 transaction there was incurred a discount on preferred stock of $161,500 and in the 1930 transaction $25,000 which had never been reflected on Pacific's books. Pacific agrees that such discount should be reflected on its books. Accordingly, we find that $186,500 should be transferred from Account 100.5, through Account 107, to Account 150, Discount on Capital Stock.

(7) Improper Charges to Production Plant

[12] Sometime in 1912 Pacific commenced construction of a hydroelectric generating station on Hood river. The work was suspended in 1913 but construction costs were not closed to Plant Account until 1919. Included therein was $44,769.73, representing interest accruals in excess of the amount applicable to the construction period, and $9,734.80, representing charges for labor and other items incurred from 1914 to 1919 and improperly charged to Plant Account.

These charges, totaling $54,504.53, were partially offset by improper credits for sales of material and equipment to the extent of $11,949.85, thus reducing the improper charges to $42,554.68.

Pacific has established this amount of $42,554.68 in Account 107. We find such sum should be disposed of by a charge to Account 271, Earned Surplus.

(8) Miscellaneous Costs Walla Walla Valley Railway Company

[13] In the organization of Walla Walla Valley Railway Company by American in 1910, certain costs were incurred amounting to $191.75. This amount was classified in Account 107 by the staffs and Pacific concedes that this is a proper classification. As Pacific disposed of its interest in the Walla Walla Valley Railway Company in 1921, the amount should be disposed of by a charge to Account 271, Earned Surplus.

Affiliated Company Fees

[14, 15] The staff report, Exhibit No. 16 in this proceeding, shows that large fees paid by respondent to its parent companies and affiliated service companies have been charged to its plant accounts. It is likely that such fees contain an element of profit to the affiliates which should not be allowed. The staffs recommend that the fees be permitted to remain tentatively in the accounts because of the substantial additional analysis, particularly of the books of the affiliated companies, which would be required to ascertain the appropriate adjustments and the delay which would ensue.

We have consistently held that services rendered to licensees and public utilities by affiliates should be at cost and that all affiliated company profits included in fees and other charges should be removed from the plant ac-

counts.[12] We take notice of the fact that many other public utility subsidiaries of Electric Bond & Share Company have included in their plant accounts large fees for alleged services by that holding company, its subholding companies and affiliated service companies. The costs related to the fees for such alleged services which must be determined are not segregated by subsidiaries on the books of such holding or service companies. It would therefore seem more practical to examine the books and records of the holding companies and the affiliated service companies and make the necessary adjustments to all the public utility subsidiaries of Electric Bond & Share Company at one time, rather than to make the necessary studies and adjustments as each case arises. This procedure will prevent the overlapping of effort and will insure more uniform determinations.

Accordingly, we reserve for a future time the investigation and studies necessary to eliminate from the plant accounts of the respondent the amounts included therein as profits on fees of approximately $1,034,000 paid to its holding companies and affiliated service companies.

In our order of July 1, 1941, respondent was ordered to show cause why the Commission should not institute appropriate proceedings against the company, its officers or directors, for failure to comply with the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's Order dated May 11, 1937.

Respondent's officers and employees in the meantime have complied with our requirements and have shown an awareness of the obligations imposed upon them by the Federal Power Act. We do not believe any good purpose would be served by instituting further proceedings with respect to such matter.

An appropriate order will be issued in accordance with this opinion.

Scott, Commissioner, concurring: I concur in result only.

ORDER

Upon consideration of the previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 84 with findings, which is incorporated by reference as a part hereof;

The Commission *orders* that:

Pacific Power & Light Company (hereinafter referred to as "Pacific") record in its accounts the reclassification and adjusting entries proposed in its revised reclassification and original cost studies; and

The Commission further *orders* that:

(A) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 107, Electric Plant Adjustments, the amount of $4,121,981.41;

(B) Pacific dispose of the amount of $4,121,981.41 established in Account 107, Electric Plant Adjust-

[12] Opinion No. 4, Re Alabama Power Co. 1 Fed PC 25, PUR1932D 345; Opinion No. 11, Re Louisville Gas & E. Co. (1933) 1 Fed PC 130, 1 PUR(NS) 454; Opinion No. 68, Re Pennsylvania Power & Light Co. (1942) 44 PUR(NS) 344; Opinion No. 72, Re St. Croix Falls Minnesota Improv. Co. (1942) 43 PUR(NS) 1; Opinion No. 78, Re Puget Sound Power & Light Co. (1942) 45 PUR (NS) 237.

ments, under Par. (A) above, by charging $1,135,113.91 of that amount to the special reserve created pursuant to the Commission's Opinion No. 69 (1941) 42 PUR(NS) 36; and by charging the balance of $2,986,867.50 to Account 271, Earned Surplus; *provided,* however, that Pacific may charge all or any part of said $2,986,867.50 against a Capital Surplus properly created for that purpose;

(C) Pacific remove the amount of $4,559.68 from Account 100.5, Electric Plant Acquisition Adjustments, and transfer said amount to Account 301, Organization, within Account 100.1, Electric Plant in Service;

(D) Pacific remove from Account 250, Reserve for Depreciation, and transfer to Account 100.5, Electric Plant Acquisition Adjustments, the amount of $41,029.95, representing the over retirement of the Fruitvale canal;

(E) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 150, Discount on Capital Stock (through Account 107), the amount of $186,500, representing discount on preferred stock incurred by Pacific in 1910 and 1930;

(F) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and charge to Account 271, Earned Surplus (through Account 107), the amount of $191.75, representing costs incurred in connection with the organization of Walla Walla Valley Railway Company;

(G) Pacific remove the amount of $5,733.65 from Account 100.5, Electric Plant Acquisition Adjustments, and transfer said amount to Account 140, Unamortized Debt Discount and Expense (through Account 107);

(H) Pacific dispose of the amount of $2,741,591.66 classified in Account 100.5, Electric Plant Acquisition Adjustments, by charging said amount to Account 537, Miscellaneous Amortization, in ten equal annual charges, commencing with the calendar year 1942;

(I) The transfer by Pacific of $2,024,993.99 to Account 140 is approved;

(J) Pacific remove the amount of $1,174,225.36 from Account 140 and charge said amount to Account 271, Earned Surplus, and account for the balance remaining in Account 140 in accordance with Balance Sheet Instruction 6-C;

(K) Pacific remove from Account 250, Reserve for Depreciation, and charge to Account 271, Earned Surplus (through Account 107), the amount of $524,301.40, representing the loss, in excess of the applicable reserve for depreciation, from the sale or other disposition of nonelectric properties prior to 1936;

(L) Pacific remove from Account 107 and charge to Account 271, Earned Surplus, the amount of $42,554.68, representing improper charges to production plant in connection with the construction of a hydroelectric generating station on Hood river;

(M) The transfer of $36,009.72, representing Capital Stock Expense, from Account 107 to Account 151, Capital Stock Expense, is approved;

(N) The transfer of $232,002.22, representing investment in the stock of Inland, from Account 107, to Account 111, Investment in Associated Companies, is approved;

(O) Pacific file with the Commis-

sion on or before December 31, 1942, certified copies of the entries required by Pars. (A) to (N), inclusive, of this order; and on or before March 15th of each year thereafter the entries required by Par. (H) of this order until the entire amount in Account 100.5 has been disposed of;

(P) The provisions of this order are not to be construed as dispensing with the necessity of full compliance with the requirements of the Public Utility Holding Company Act of 1935 and the rules, regulations, and orders issued by the Securities and Exchange Commission.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Dodge County Telephone Company

[2-U-1873.]

Rates, § 143 — Reasonableness — Operating deficit — Comparative rates.

1. An increase in rates is warranted when a telephone company would, under present rates, be operating at an annual deficit and where present rates are generally lower than rates of telephone utilities of similar size and characteristics and costs of operation are likewise lower, p. 147.

Return, § 111 — Telephone company.

2. Increased telephone rates were authorized to produce a return of about 5 per cent, p. 147.

Rates, § 649 — Notice under Price Control Act.

Order authorizing increased rates subject to requirements of Act of Congress approved October 2, 1942, known as Public Law 729—77th Congress, Chap. 578, 2nd Session, p. 148.

[December 11, 1942.]

APPLICATION *for authority to increase telephone rates; granted subject to conditions.*

By the COMMISSION: The application in the above-entitled matter was filed with the Commission on October 19, 1942.

Hearing: November 13, 1942, at Madison before Examiner H. T. Ferguson.

APPEARANCES: Dodge County Telephone Company, by C. G. Bickel, President, Victor Bickel, Secretary, Reeseville, and J. E. Byrne, Auditor, Madison.

Of the Commission staff: K. J. Jackson, Rates and Research Department.

The Dodge County Telephone Company operates telephone exchanges at Reeseville and Lowell, Dodge county. Magneto service is furnished from the Reeseville exchange to 102 urban and 131 rural subscribers. At Lowell

34 urban and 43 rural subscribers receive service by means of remote control equipment operating through the Reeseville switchboard.

The applicant proposes to increase net monthly rates for principal classes of service as follows:

Class of Service	*Present*	*Proposed*
Business, one-party	$1.90	$2.25
Business, two-party	1.70	2.00
Business, multi-party	1.50	...
Residence, one-party	1.40	1.75
Residence, two-party	1.30	1.50
Residence. multi-party	1.10	1.25
Rural business	1.50	1.75
Rural residence	1.25	1.50

The testimony in support of the application purported to show that current and future costs of furnishing service have increased over previous years to a point where the company will be operating at a deficit. Following is an income statement of the company as set forth in its annual report to the Commission for the calendar years 1940 and 1941 and projected to reflect the proposed increase in rates, together with current and future increased expenses as estimated by the applicant:

	1940	1941	Projected
Operating Revenues			
Local service revenues	$4,852.45	$4,946.45	$5,897.85
Toll service revenues	888.23	989.80	989.80
Miscellaneous revenues	.....	3.50	.....
Total	$5,740.68	$5,939.75	$6,887.65
Deduct: Uncollectible operating revenues	.....	390.40	35.50
Total Operating Revenues	$5,740.68	$5,549.35	$6,852.15
Operating Expenses			
Maintenance expense	$2,155.83	$1,770.45	$1,954.37
Traffic expense	1,597.08	1,445.65	1,750.00
General expense	649.71	1,098.23	1,262.02
Total	$4,402.62	$4,314.33	$4,966.39
Depreciation expense	.....	786.58	810.19
Taxes	466.60	551.56	625.99
Total Operating Expenses	$4,869.22	$5,652.47	$6,402.57
Net Operating Income or Deficit	$871.46	$(103.12)	$449.58

[1, 2] The above table shows a projected estimated increase in maintenance traffic and general expense over actual 1941 expense of $652.06. Of this amount approximately 85 per cent represents increased labor costs now effective. Therefore, on the basis of present rates after adjustments for uncollectible revenues, it appears that the applicant will be operating at an annual deficit of about $400. Under the circumstances an increase in rates is warranted. Our investigation indicates that the company estimate of future net operating income is not unreasonable. On the basis of net book value of property and plant, annual net operating income of $450 will result in a rate of return of about 5 per cent. The present rates of the applicant are generally lower than rates of telephone utilities of similar size and characteristics; costs of operation are likewise lower. Therefore, we are of the opinion that the proposed increased rates are reasonable and should be made effective.

The Commission finds:

That the present schedule of rates

of the Dodge County Telephone Company is unreasonable; and that the rates and schedules as hereinafter prescribed are just and reasonable.

ORDER

It is therefore *ordered:*

That subject to such notification with respect to the increase of rates as hereinafter authorized and prescribed, as may be required under the Act of Congress approved October 2, 1942, known as Public Law 729—77th Congress, Chap. 578, 2nd Session, the Dodge County Telephone Company cancel its now effective schedule of rates and make effective the schedule of rates, and rules applicable thereto and to service furnished, as follows: [Schedules omitted.]

WISCONSIN PUBLIC SERVICE COMMISSION

Eugene W. Murphy

v.

Northern States Power Company

[2-U-1874.]

Service, § 201 — Heating extensions — Effect on existing patrons.

A company operating a heating utility in a city under an indeterminate permit has an obligation to render service on demand to at least those persons residing in the portion of the city where the utility has its mains, whether or not the extension of service to such a person will diminish or impair the service rendered to existing patrons.

Service, § 117 — Duty to serve — Statutory requirements.

Discussion of provisions of the Wisconsin Statutes, requiring public utilities to furnish reasonably adequate service and facilities, in the light of judicial decisions on the subject, p. 150.

Discrimination, § 213 — Heating service — Present and future patrons.

Statement that existing patrons of a heating utility have no more legal right to service from the utility than does a new applicant for service when facilities are inadequate, p. 151.

Service, § 2 — Not property right.

Statement that the right of service from a utility is not a property right, p. 151.

Service, § 216 — Abandonment — Necessity of authorization — Piecemeal discontinuance.

Discussion of the obligation of a company furnishing heating utility service to continue such service, instead of of engaging in a piecemeal abandonment because of low earnings, without recourse to a proper proceeding under the utility law, p. 151.

MURPHY v. NORTHERN STATES POWER CO.

COMPLAINT *against refusal to furnish heating service; extension of service ordered.*

By the COMMISSION: Eugene W. Murphy, La Crosse, on September 17, 1942, filed informal complaint with the Commission that Northern States Power Company, a public utility furnishing heating service by hot water in the city of La Crosse, La Crosse county, had unreasonably refused and neglected to furnish such heating service to his premises at 126 South 15th street in La Crosse upon his request and demand. The Commission deemed a formal investigation of such alleged refusal to be desirable and on October 20th issued a notice of investigation and hearing.

Hearing: November 5, 1942, at Madison before Examiner Calmer Browy.

APPEARANCES: Eugene W. Murphy, in his own behalf and by Philip H. Porter, Attorney, Madison; Northern States Power Company by Bailey Ramsdell, Attorney, Eau Claire.

Of the Commission staff: H. T. Ferguson, Staff Counsel, and H. J. O'Leary, Chief, Rates and Research Department.

The record was closed on November 23rd with the receipt of an exhibit which was to be furnished by the company. A brief was filed on November 16th by the informal complainant and a reply thereto on November 21st by the company.

The company provides heating service through circulation of hot water within a part of the city of La Crosse under an indeterminate permit arising out of a franchise granted by the city prior to the enactment of the indeterminate permit law. The territory in which the company serves is defined by a map included within rate schedules filed with us. No question is raised whether such map legally limits the territory beyond which the company cannot be compelled to extend because the service involved in this proceeding is located within the territory and on the system and mains of the utility.

Murphy's home is heated by an individual oil-burning hot-water heating plant. The record indicates that the house under a former owner was heated by the utility for a period of nearly ten years with service discontinued in 1910. The lateral from which service was previously given the premises extends along an alley back of Murphy's home and furnishes service at the present time to one customer. The company witnesses raised some question as to the fitness of internal piping in the Murphy home for connection to the central hot water heating system, but such question is not in issue because Murphy stands willing to provide adequate facilities on his premises to conform with all reasonable requirements, rules, and regulations of the utility.

The record discloses that Murphy last summer requested the utility to extend service to his premises, that informal conversations were carried on between him and utility representatives, that he finally signed and filed an application for service, and that the utility by letter of September 4th refused to extend service.

The utility contends that it does not have available the service which Mur-

phy seeks without rebuilding a substantial part of the whole heating utility system and without rebuilding mains and laterals in the area near Murphy's residence. The company contends further that mains and laterals near Murphy's home are loaded to near capacity, that Murphy cannot be furnished adequate service, and that extension of service to him will seriously diminish service to existing customers by reducing the differential of pressure in mains through which the hot water is sent out from the central plant and in mains through which the water is returned to the plant. The company submitted an estimate of $3,280 as the cost of rebuilding the lateral in the alley back of Murphy's premises to place it in condition to handle demands of Murphy in addition to those of the customer now served by such lateral. In our judgment this estimate is exceedingly high. The company also submitted book figures showing a net operating revenue of $4,568 in the year ended August 31, 1941, and of $2,313.42 in the year ended August 31, 1942. The figures showed deficits for corresponding periods in 1938, 1939, and 1940.

The company objects to rendering service to Murphy on the ground that the door would be opened to demands for service from many other residents of the area in which the heating utility has mains. The company states that it has followed a policy of refusing service to new customers but has furnished additional service to premises of some existing customers when buildings have been enlarged or rebuilt. In so doing, the company has relied on the decision of the Railroad Commission of Wisconsin on July 13, 1922 (26 Wis RCR 843) holding that Wisconsin-Minnesota Light and Power Company, predecessor heating utility at La Crosse, was not required to extend service to a partnership which was establishing bowling alleys in the down-town district. Such decision stated in part:*

"Heating utilities are by the nature of the product furnished materially different from electric, gas or water utilities, and the question of extending heating service cannot be governed by the broad general principles applicable to other utility service extensions.

"A heating plant must be designed for a specific area and patronage, and such natural limitations of the business must be considered in determining the extent of the duty owed the public with respect to the extension and enlargement of the plant or distribution system."

We do not agree with such decision or the statements above quoted and do not consider that such decision is legally sound.

Section 196.03(1), Statutes, provides that "every public utility is required to furnish reasonably adequate service and facilities." This subsection of the statute is in the form in which it was originally enacted in 1907 as part of the state's public utility law. Section 196.26, Statutes, provides that persons may complain to the Commission if they cannot obtain service from a public utility. In an interpretation of § 196.03(1) the state supreme court stated in La Crosse v. La Crosse Gas & E. Co. (1911) 145 Wis 408,

*EDITOR'S NOTE: Quotation contained in original decision, U-2719, but omitted from printed report in volume 26, page 843.

130 NW 530, that the purpose of such law was to secure to patrons service on a plane of equality and at the lowest price practicable. In Krom v. Antigo Gas Co. (1913) 154 Wis 528, 143 NW 163, the supreme court stated that the section was merely declaratory of the common law and added nothing to the obligations of persons or corporations carrying on the business of a public utility. In Waukesha Gas & E. Co. v. Waukesha Motor Co. (1926) 190 Wis 462, 209 NW 590, the supreme court stated that the utility was not an insurer of continuous service if conditions beyond the control of the utility cause interruptions, provided the utility exercised reasonable care and diligence in so constructing and operating its plant as to prevent such interruptions.

The respondent's brief cites a decision by the state supreme court on October 13, 1942, in Milwaukee v. Public Service Commission, — Wis —, 5 NW(2d) 800, as legal sanction for a utility's limiting its service as Northern States Power Company has attempted to do in operation of its heating plant at La Crosse. The decision in the Milwaukee Case related to service in a town where there is no indeterminate permit (South Shore Utility Co. v. Railroad Commission, 207 Wis 95, PUR1932B 465, 240 NW 784), whereas Northern States Power Company is operating under an indeterminate permit in the incorporated city of La Crosse.

From the decisions of our supreme court interpreting § 196.03, we conclude that Northern States Power Company in operation of its heating utility at La Crosse has an obligation to render service on demand to at least those persons residing in the portion of the city where the utility has its mains. It may or may not be true that the extension of service to the Murphy home will diminish or impair the service rendered to existing patrons of the utility, but existing patrons have no more legal right to service from the utility than does Murphy. The right of service from a utility is not a property right. The utility has an obligation under § 196.03 to render reasonably adequate service at least in the area where its facilities are located.

It is evident that the company is engaged in a piecemeal abandonment of heating utility service at La Crosse because such utility has not yielded as large earnings as have the company's electric and gas utilities at La Crosse. We, as a regulatory body, cannot permit the continuance of such program by the company. If the company does not want to continue as a public heating utility at La Crosse, it has its recourse by proper proceeding under the utility law. From the record in this case it is evident that when and if the lateral in the alley back of the Murphy premises is no longer fit for service, the company will decline to render service to the customer connected thereto rather than replace the lateral.

The respondent made the perfunctory claim that it could not obtain the facilities necessary to serve Murphy because of war priorities on metal. The record discloses, however, that no bona fide attempt has been made by the company to ascertain whether it can obtain such facilities under existing Federal war restrictions.

After we had come to the above conclusions, there came to our attention a decision of the Indiana supreme

court on November 1, 1901, in State ex rel. Wood v. Consumers Gas Trust Co. 157 Ind 345, 355, 61 NE 674, 55 LRA 245. The court on the basis of circumstances greatly similar to those in the present case came to the same conclusion. The Consumers Gas Trust Company furnished heating service by means of natural gas piped into the premises of customers and because of a reduction in the pressure and consequently the supply of natural gas refused to extend service to additional customers. The company contended, as does the respondent in this case, that it was having difficulty in supplying adequate service to existing customers, particularly during the cold weather. The Indiana company contended, as does the respondent in this case, that the addition of customers would diminish and impair service to existing customers. The court concluded:

"The relatrix is not asking, nor the court commanding, that the company attempt to increase its supply of gas. The relatrix is only seeking to be permitted to share in the quantity of gas the company has at its command, whatever that may be, on the same terms that others are permitted to use it. There is in the request of the relatrix nothing unreasonable and nothing impossible of performance. The whole question comes to this: The appellee, under public grant for the dispensation of a public good, has taken possession of certain streets and alleys in Indianapolis for the distribution and sale of natural gas to those abutting on its lines. The relatrix, owning a lot abutting on one of appellee's lines, erected thereon a dwelling house, and, upon the faith of being permitted to use the gas, has piped her house, and constructed her heating apparatus of a form, suitable only to the use of natural gas as a fuel, which will be worthless if natural gas is denied her. She has, in common with other abutters, been subjected to the inconvenience of having the street in front of her house dug up and had her property occupied with the company's pipes. She has made all necessary arrangements to receive the gas, has tendered appellee its usual charges, has offered to abide by its reasonable rules and regulations, and we perceive neither legal reason, nor natural justice, in denying her the rights accorded to those of her neighbors who have contributed in the same way to appellee's enterprise."

The Commission finds:

1. That the undertaking of heating service in the city of La Crosse by Northern States Power Company includes service to Eugene W. Murphy, the informal complainant herein.

2. That the said company has unreasonably and unlawfully refused to render heating service to the said Murphy.

3. That reasonably adequate service to the public requires that said company extend reasonably adequate service to the said Murphy.

ORDER

It is therefore *ordered:*

That Northern States Power Company, as a public heating utility in the city of La Crosse, be and hereby is ordered and directed to extend heating services to the premises of Eugene W. Murphy at 126 South 15th street in such city.

SECURITIES AND EXCHANGE COMMISSION

Re York Railways Company

[File No. 55-85, Release No. 3876.]

Corporations, § 24 — Reorganization — Fees and expenses.

1. The Commission, in determining the reasonableness of fees and expenses in reorganization proceedings, in addition to following the provisions of § 11(f) of the Holding Company Act, 15 USCA § 79k(f), and Rule U-63 pursuant to which application for allowancees have been made, must adhere to the principles governing the payment of fees and expenses in proceedings under Chap. X of the Bankruptcy Act, which requires, among other things, that the applicants be required to show that they have not purchased or sold any securities of the debtor corporation after institution of the reorganization proceedings, p. 155.

Corporations, § 24 — Reorganization — Fees and expenses.

2. Allowances for services and expenses in reorganization proceedings must be moderate; must not be so large as to affect the financial soundness of the reorganized enterprise in that the aggregate charges shall not impair necessary working capital or impose an undue burden on the reorganized company; in considering individual applications, the ultimate test is the measure of benefit conferred upon the debtor by the applicant's activities and, as subsidiary considerations, the time properly required to be spent on the matter for which compensation is sought, the necessity of the services rendered, the intricacy of the problems involved, the ability and experience of the applicant, and local rates for similar services, in addition to which duplication of efforts should be avoided, p. 156.

Corporations, § 24 — Reorganization — Fees and expenses.

3. The amount of time devoted to a case should not be the final determinant of an allowance for fees in a reorganization proceeding, since the time may not have been profitably spent, but, on the other hand, in circumstances showing a lack of substantial progress toward ultimate reorganization, the time devoted by counsel may properly be regarded as placing a ceiling upon the allowance which counsel may receive, p. 159.

[November 2, 1942.]

APPLICATION *filed pursuant to Rule U-63, promulgated under § 11(f) of the Holding Company Act, for approval of fees and expenses to be paid out of estate of debtor in possession in reorganization proceedings; fees and expenses determined.*

APPEARANCES: Morris L. Forer and Solomon Freedman, for the Public Utilities Division of the Commission; Edward A. G. Porter and Earl G. Harrison for Saul, Ewing, Remick & Harrison; Manuel Kraus, for Kraus and Krekstein; Francis H. Scheetz and Robert Gibbon, for Tradesmens National Bank and Trust Company, and for Evans, Bayard and Frick;

Edward A. G. Porter, for Day & Zimmerman, Inc.

By the COMMISSION: Five applications have been filed, pursuant to Rule U–63 of the General Rules and Regulations, promulgated under § 11 (f) of the Public Utility Holding Company Act of 1935, 15 USCA § 79 k(f), for approval of fees and expenses of an aggregate maximum amount of $34,123.46, presently to be paid out of the estate of the York Railways Company, debtor in possession (hereinafter sometimes referred to as "York").[1]

The requests for fees and expenses now before us are:

Saul, Ewing, Remick & Harrison, counsel for debtor	$20,000.00
Kraus and Krekstein, special tax consultants	6,000.00
Tradesmens National Bank and Trust Company, indenture trustee	2,500.00
Evans, Bayard and Frick, counsel for the indenture trustee	5,000.00
Day & Zimmerman, Inc. expert witness for Debtor	623.46

After appropriate notice, public hearings were held before a duly designated trial examiner. It was stipulated by each of the applicants and by counsel for the Public Utilities Division that any evidence offered by one applicant would be considered as evidence with respect to all other applicants. In addition, all parties have waived the submission of proposed findings of fact, filing of briefs, and requests for oral argument. The Commission has considered the record, and on the basis thereof makes the following findings:

History of Proceedings

York Railways Company, incorporated in Pennsylvania, is a subsidiary[1a] of NY PA NJ Utilities Company, a registered holding company, which in turn is a subsidiary of the trustees of Associated Gas and Electric Corporation, a registered holding company. York Railways Company filed a petition in the United States district court for the eastern district of Pennsylvania on November 30, 1937, for its reorganization pursuant to § 77B of the Bankruptcy Act, as amended, and on December 29, 1937, it was appointed debtor in possession. At that time, York was the operator of an electric street railway system in York, Pennsylvania, and vicinity. In addition, the debtor owned, as its principal asset, all the stock of the Edison Light & Power Company, an electric utility operating in and around York, Pennsylvania. It also owned all the stock of the York Bus Company, which operated, by bus routes, the street railway lines previously abandoned by York, and all the stock of the York Steam Heating Company, operator of a steam distribution system in the city of York.

The filing of the petition was occasioned by the inability of the company to meet the approaching maturity date, December 1, 1937, of the principal amount of $4,990,000 of its first mortgage 30-year 5 per cent gold bonds.[2]

[1] In reorganization proceedings in which this Commission is a party under § 208 of Chap. X of the Bankruptcy Act, 11 USCA § 608, requests for allowances of fees and expenses do not come before us, by virtue of the exemption granted in Rule U–63. In this case we have not intervened in the proceeding before the bankruptcy court, so that our approval is required.

[1a] An application, filed May 4, 1938, requesting the Commission to declare that York was not a subsidiary of a holding company was withdrawn on January 28, 1939.

[2] An application for the extension of these

A plan of reorganization has been incorporated as part of the original petition for reorganization. On November 22, 1938, it was approved by the Pennsylvania Public Utility Commission[3] and, thereafter, by a special master appointed by the district court. The plan was filed with this Commission on February 2, 1939, but was withdrawn on January 5, 1942. It was indicated at the hearings that a new plan is contemplated.

Applicable Principles of Law

[1] The primary point of reference in determining reasonableness of fees and expenses in reorganization proceedings is, of course, the section of the act,[4] and the rule pursuant to which the applications have been filed.[5]

In addition, we believe we must adhere to the principles governing the payment of fees and expenses in proceedings under Chap. X of the Bankruptcy Act.[6] Thus, among other things, it may be noted that the applicants have been required to show that they have not purchased or sold any securities of York after the institution of the reorganization proceedings. Bankruptcy Act, § 249, 11 USCA § 649.

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bonds had been refused by the Pennsylvania Public Utility Commission on November 23, 1937. See Re York R. Co. 17 Pa PUC 350, 21 PUR(NS) 269. York appealed this order to the superior court of Pennsylvania which, on May 6, 1938, reversed the Commission and directed the approval of the application. York R. Co. v. Public Utility Commission, 131 Pa Super Ct 126, 24 PUR(NS) 401, 198 Atl 920. In addition, York had secured an injunction in the Dauphin county court against the enforcement of the order. The Commission appealed this decision to the supreme court of Pennsylvania which, on June 30, 1938, upheld York. See York R. Co. v. Driscoll, 331 Pa 193, 24 PUR(NS) 405, 200 Atl 864. Saul, Ewing, Remick & Harrison was counsel for York in these court proceedings.

[3] See Re York R. Co. 19 Pa PUC 345, 26 PUR(NS) 201. In this order the Pennsylvania Commission stated that it approved the plan only because the superior court had ordered the Commission to extend the bond issue which was the basis of the plan of reorganization.

[4] Section 11(f):

". . . The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission."

[5] Rule U-63:

"All fees, expenses, and remuneration, whether interim or final, to whomsoever paid for services rendered or to be rendered in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary thereof, in any court of the United States, shall be subject to approval by the Commission as to the maximum amount that may be paid for such services. . . ."

[6] The pertinent provisions of the Bankruptcy Act are as follows:

"Section 241. The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter . . . (4) by the attorney for the debtor;

"Section 242. The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or not accepted by creditors and stockholders or finally confirmed by the judge—(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders; (2) by any other parties in interest . . . (3) by the attorneys or agents for any of the foregoing. . . ."

We presume that, pursuant to § 267(c)(2) of the Bankruptcy Act, 11 USCA § 667, the provisions of Chap. X rather than those of § 77B are pertinent to this proceeding, as the application of the provisions of Chap. X is "practicable." In Re Old Algiers (1938) 100 F(2d) 374, 375; Paul v. Shields (1939) 4 SEC 914, 916, 917; Re United Teleph. & Electric Co. (1940) 7 SEC 809, 813. However, it should be stated that the conclusions we have reached with respect to the allowances for fees and expenses would not be different if the provisions of § 77B, rather than Chap. X, were deemed to govern.

[2] Allowances for services and expenses must be moderate;[7] they must not be so large as to affect the financial soundness of the reorganized enterprise in that the aggregate charges shall not impair necessary working capital or impose an undue burden on the reorganized company;[8] in considering individual applications, the ultimate test is the measure of benefit conferred upon the debtor by the applicant's activities[9] and, as subsidiary considerations, the time properly required to be spent on the matter for which compensation is sought,[10] the necessity of the services rendered,[11] the intricacy of the problems involved,[12] the ability and experience of the applicant,[13] and local rates for similar services.[14] In addition, duplication of effort should be avoided.[15]

Size of Estate and Ability to Pay Fees

As of March 31, 1942, York had total book assets and other debits of $4,613,805.25. Cash in the total amount of $146,367.50, as of April 9, 1942, was recorded on its books. Of this sum, $103,495.18 is held in special accounts by the trustee for bondholders. Of the remainder, the court has specifically set aside $34,527.02 for payment of interim fees and for general purposes. This sum exceeds the aggregate amount of fees requested at this time, and any small sums of current expenses that must be met can be paid from the balance that will be available.

Fees Previously Paid

There has already been paid,[16] in the form of fees and expenses since November 30, 1937, the sum of $26,920.28 to persons other than the present five applicants, as follows:

Vincent K. Keesey, for attending directors' meetings in his capacity as counsel, December, 1937 to date of hearing	$270.00
Schmidt, Keesey, Stair & Kurtz professional services (substantially all in matters relating to current business of York Railways Company)	644.64
Expenses	139.43
Hause, Evans, Storey & Lick of Harrisburg, tax consultants 1937–1939	1,900.00
Expenses	3.30

[7] Callaghan v. Reconstruction Finance Corp. (1936) 297 US 464, 468, 469, 80 L ed 804, 56 S Ct 519; Butzel v. Webster Apartments Co. (1940) 112 F(2d) 362, 367; In Re Barr Hotel Co. (1938) 23 F Supp 540, 542.

[8] In Re Tom Moore Distillery Co. (1940) 32 F Supp 382, 385; Re United Teleph. & Electric Co. *supra*, note 6, at p. 814.

[9] Dickinson Industrial Site v. Cowan (1940) 309 US 382, 389, 84 L ed 819, 60 S Ct 595; In Re Consolidated Distributors (1924) 298 Fed 859, 862; In Re Standard Gas & E. Co. (1939) 26 F Supp 636, 643.

[10] In Re Owl Drug Co. (1936) 16 F Supp 139, 142; In Re Paramount Publix Corp. (1935) 12 F Supp 823, 829.

[11] In Re National Department Stores (1935) 11 F Supp 633, 641; Re United Teleph. & Electric Co. *supra*, notes 6, 8, at p. 815.

[12] In Re Barceloux (1934) 74 F(2d) 288, 294.

[13] In Re Herald-Post (1937) 21 F Supp 231, 232.

[14] In Re Wayne Pump Co. (1935) 9 F Supp 940, 942.

[15] Milbank, Tweed & Hope v. McCue (1940) 111 F(2d) 100, 101; In Re Standard Gas & E. Co. (1939) 106 F(2d) 215, 216; In Re Irving-Austin Bldg. Corp. (1938) 100 F(2d) 574, 579; In Re National Department Stores *supra*, note 11, at p. 638.

[16] With the exception of the fee paid to the special master, court approval has not been obtained for payment of the other sums, but such approval is to be requested. Approval of this Commission had not been requested because, at the time payments were made, York had pending an application to be declared not a subsidiary of a registered holding company.

Henry W. Braude, special master appointed by the court to pass, inter alia, upon the Plan of Reorganization	5,000.00
Expenses, including stenographic fees ($54.99 remains unexpended in the possession of the special master)	500.00
Travis, Brownback & Paxson, of counsel (but not the attorneys generally of record in the 77B proceedings) with Saul, Ewing, Remick & Harrison, received payments for services over a period commencing prior to the filing of the petition and extending to the Spring of 1940, when their services terminated	15,088.00
Expenses	2,249.34
Metropolitan Edison Company, in reimbursement for professional services and expenses of Harold J. Ryan (and his associate)	971.00
Expenses	154.54

These payments must be taken into account in determining the maximum allowances which should be permitted at this time.

Application of Saul, Ewing, Remick & Harrison

Saul, Ewing, Remick & Harrison has been employed as general counsel for York since the filing of the petition for reorganization, and, although stating that the value of its services is $35,000, it has requested an interim allowance of $20,000 for the work performed from that date until December 31, 1941, a period of four years and one month. This law firm has had considerable experience in other reorganization proceedings and in equity receiverships. The principal services on behalf of the firm were rendered by Edward A. G. Porter, a senior partner. Other services were rendered by Walter Biddle Saul, also a senior partner, and by F. A. VanDenbergh, Jr., an associate. The services of Saul, exclusive of hearings before the court, to a large extent represent conferences with his associates. The services of VanDenbergh have always been in relief of work performed by either Porter or Saul. This firm does not keep accurate time schedules, and the hours assigned to services for York have been estimated.

For some time prior to the filing of the petition for reorganization, York had been gradually abandoning its rail service and substituting bus service operated by a subsidiary bus company. On November 6, 1937, an application for total abandonment of street railway service and substitution of bus service was filed with the Pennsylvania Commission. After York was placed in reorganization, total abandonment and substitution of bus service was permitted on November 22, 1938. Incident to the abandonment, the Pennsylvania State Highway Department, the city of York and a number of boroughs asserted large claims for repaving obligations. The claims were compromised by York. Applicant was not counsel of record at the first hearing on the abandonment proceeding, but after York was placed in reorganization, it took an active part in negotiations relative to the compromise of the repaving obligations, although a great deal of work was also performed by Travis, Brownback & Paxson, of counsel, and Vincent K. Keesey, local counsel.

All the realty and other assets of York were pledged under the lien of the mortgage securing the bond issue. After abandonment of rail service and the compromise of repaving obligations, it was necessary to effectuate a procedure for the release of the lien of the mortgage covering the rails, the sale of the scrap iron after the rails

were removed, the substitution of the fund so realized to the lien of the mortgage and payment from that fund of the compromised claims of the commonwealth and the municipalities, and the sale of parcels of realty no longer needed in the public service. Applicant and counsel for the indenture trustee coöperated and evolved the procedure whereby the above results were accomplished. Porter estimated that after York was placed in reorganization, he spent between 630 and 800 hours on problems related to abandonment of street railway service and sale of real estate.

After the substitution of bus service had been completed, the capital stock of the York Bus Company was sold by York to nonaffiliated interests. At the hearing before the court, applicant succeeded in obtaining a sale price of $220,000 which was $20,000 higher than the price previously offered. Porter estimated the total time he spent on this matter was about 150 hours.

As part of its duties as counsel to York, applicant has stated that it has been required to study the problems of the debtor's subsidiaries and of the Debtor's parent, NY PA NJ Utilities Company, as well as the problems of the trustees of Associated Gas and Electric Corporation in so far as those problems might affect debtor. Porter estimated he spent between 250 and 300 hours since November 30, 1937, upon those problems.

In this connection, Porter stated that one of the most serious problems he was required to study was the rate case which the Pennsylvania Commission had instituted against the Edison Light & Power Company, the wholly owned subsidiary of York and its most important asset. This rate case was brought, in turn, before two Federal statutory courts[17] and once before the United States Supreme Court.[18] It is admitted that applicant was counsel of record before the two Federal statutory courts for which services it received fees totaling $12,500.[19] After the return of the record from the United States Supreme Court, applicant was not counsel therein. Since the members of applicant's firm were required to study this rate case when applicant was counsel in the Federal statutory court proceedings, for which services applicant has already received compensation, and since other counsel were retained after the return of the record from the Supreme Court, it is difficult to comprehend the need for the considerable study of the rate problem and it would seem that a large portion of the time spent by Porter on the study of this problem should not be charged against York in these proceedings.

A plan of reorganization, which had been prepared by Travis, Brownback & Paxson, was filed with the petition for reorganization on November 30, 1937. Applicant aided local counsel and a member of the firm of Travis, Brownback & Paxson in the conduct of the hearings which occupied two

[17] See Edison Light & P. Co. v. Driscoll (1937) 21 F Supp 1, 20 PUR(NS) 353; Edison Light & P. Co. v. Driscoll (1938) 25 F Supp 192, 25 PUR(NS) 441.

[18] Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715.

[19] $7,500 of the $12,500 was received for services rendered after debtor was placed in reorganization. Since Edison Light & Power Company is a wholly owned subsidiary of debtor and virtually its only asset, we are concerned that no approval of the fee was obtained from the district court.

full days before the Pennsylvania commission relative to the approval of the plan. Applicant had active charge of the conduct of the hearings, fourteen in number, before the special master appointed by the district court to take evidence and report upon the plan. As noted above, the Pennsylvania Commission and the special master approved the plan. The plan was filed with this Commission on February 2, 1939, but was withdrawn on January 5, 1942. Before this Commission, the negotiations were handled primarily by Travis, Brownback & Paxson with applicant acting in an advisory capacity. At the present time, therefore, it is difficult to determine what portion, if any, of the services performed on the withdrawn plan may finally prove to have been of benefit to Debtor. Porter estimated he spent a minimum of 175 hours on the plan of reorganization.

Payment of dividends and interest to York by its subsidiary was restricted by the Pennsylvania Commission on May 23, 1939,[20] and it is necessary to present periodic informal applications to that Commission to permit payments to York. Such payments provide the only regular source of cash available to pay the semiannual instalments due upon funded debt. Applicant handled this matter with, in the early stages, the assistance of Travis, Brownback & Paxson. No specific number of hours has been submitted for this work, but such time is included as part of that given for services performed in the general administration of the debtor.

In addition to the specific work outlined above, applicant performed other general services such as are incident to every reorganization proceeding. Applicant secured court approval when required of York's activities and also filed reports upon the progress of the reorganization. Porter estimated he spent approximately 300 hours in this general work for York.

As a whole, the work of applicant has been considerable and, it would appear, has contributed beneficially to the administration of the estate of the debtor. The detailed hours estimated by Porter as having been spent on affairs of York total between 1,500 and 1,725. In addition, it has been estimated Saul spent 100 hours and Van-Denbergh between 75 and 100 hours on matters relating to York. However, applicant gave an over-all estimate of a minimum of 1,475 hours as having been spent in services directly connected with work of York for which no compensation has been received.

[3] It is, of course, conceded that the amount of time devoted to a case should not be the final determinant of an allowance, since the time may not have been profitably spent. On the other hand, the result achieved may have been of great value, unrelated to the time required for its accomplishment. However, in the circumstances presented here showing a lack of substantial progress toward an ultimate reorganization, the time devoted by counsel may properly be regarded as placing a ceiling upon the allowance which counsel may receive.

Moreover, in addition to the sum received from Edison Light & Power Company, as noted above, applicant has received from York, since November 30, 1937, $4,250 for services ren-

[20] See Public Utility Commission v. Edison Light & P. Co. 20 Pa PUC 221, 29 PUR (NS) 75.

dered in connection with specific cases, and has also been repaid the sum of $46 for expenses incurred prior to November 30, 1937, and $1,324.96 for expenses incurred subsequent thereto. Applicant states that no compensation, in the present proceedings, is requested for services for which compensation has already been received. Nevertheless, the fact that applicant has received certain fees from York, and its subsidiary, must be considered in determining the total overall allowances to be made out of the estate, and the maximum fee which should be presently allowed to this applicant. In addition, fees of $15,088 and expenses of $2,249.45 have been paid to another firm, of counsel with applicant, for services rendered York, a large part of which was performed in conjunction with applicant's services.

Considering all relevant matters, including the time properly spent on matters of York, the nature of the services, the lack of substantial progress toward a reorganization, and the fees formerly received by applicant and by others, we believe that the allowance which applicant may presently receive for the period November 30, 1937, to December 31, 1941, should not exceed a maximum of $15,000. Of course, this is merely an interim allowance, so that the maximum amount herein fixed does not preclude its upward revision in the event that the reorganization of York is speedily and soundly effected.[21] Furthermore, when applicant applies for final allowances, a final plan of reorganization will have been approved, so that we will then know the financial position of York as reorganized, and applicant will only then be in a position to demonstrate the full benefits conferred by its services.[22]

Manuel Kraus and I. H. Krekstein

Manuel Kraus and I. H. Krekstein, tax consultants, have requested a maximum allowance, at the present time, of $6,000 in full compensation for their services covering the period August 20, 1941, to February 14, 1942, in concluding a settlement of the capital stock tax claim of the Commonwealth of Pennsylvania for the years 1928–1940, both inclusive. Applicants state that the reasonable value of their services and the ordinary fee for such work is $12,000, but as York is in reorganization, the request for allowance has been materially reduced. Compensation for the services rendered upon a claim of $14,000 of the commonwealth for corporate loans taxes is not presently requested as that problem has not, as yet, been concluded.

Applicants have been employed as special tax consultants relative to the Pennsylvania corporate tax problems of the debtor and of all the other Pennsylvania operating subsidiaries of the trustees of the Associated Gas and Electric Corporation. From 1935 to 1939, Kraus was the chief attorney in charge of all tax litigation of the department of justice of the commonwealth of Pennsylvania; and, as such, he was a member of the board of finance and revenue. Krekstein has been a certified public accountant since 1923, and from 1935 to 1939, he was

[21] Re Utilities Power & Light Co. (1938) 3 SEC 390, 400.

[22] Cf. In Re Keystone Realty Holding Co. (1941) 117 F(2d) 1003, 1006.

director of the bureau of corporation taxes and deputy secretary of revenue of the commonwealth of Pennsylvania. As such, he was also a member of the board of finance and revenue, and was chairman of the resettlement board of the commonwealth. Since 1939, Kraus and Krekstein have been associated in the specialized practice relating to Pennsylvania corporate tax problems.

When applicants were appointed as special tax consultants there was pending, either in the state courts or before administrative bodies, claims asserted by the commonwealth of Pennsylvania for capital stock taxes, for the years 1928 through 1939, of $65,822.25, which, with interest, totaled $97,609.19. For two of the years, 1932 and 1933, no appeals had been taken so that York was obligated to pay, for those years, approximately $25,000 against which no remedy was available. After a study of the problem and compilation of adjusted schedules for each taxable year and considerable negotiations with the state tax authorities, the claim was compromised for $29,800.52, which included all the years from 1928 to 1939, both inclusive, and also for the year 1940. As a result, York effected a saving of the difference in the above amounts, and additional savings of $1,500 per year in premiums for bonds required to be filed in the various tax appeals and also approximately $6,000 yearly interest on the unpaid taxes. It was particularly important that this tax problem be concluded since the tax authorities had asserted a lien for those unpaid taxes against the stock of the York Bus Company held by the debtor, and unless the problem was solved the debtor would not have been able to deliver a clear title to the stock of the bus company. As a result of applicants' efforts, the stock of the bus company was sold free of any liens of the commonwealth for capital stock taxes.

Applicants have kept an accurate time chart of the hours spent in this work. Kraus spent 81.5 hours, Krekstein spent 130.25 hours, and an associate who is employed on a salary and bonus basis, spent 166.5 hours. Thus, a total of 378.5 hours was spent by applicants upon this tax problem.

Upon consideration of the record, the valuable services rendered the debtor by applicants, and all other relevant factors, a maximum payment, at this time, of the requested $6,000 as full compensation for services rendered in settling the Pennsylvania capital stock tax of the debtor for the years 1928–1940, both inclusive, does not appear unreasonable.

Day & Zimmerman, Inc.

Day & Zimmerman, Inc., request a maxium final allowance of $623.46 for services rendered as consulting engineers to the debtor. This company was engaged by York to prepare data and present testimony, as an expert witness, with respect to the valuation of York as presented to the special master upon the plan of reorganization. A total of 57.75 hours was spent by applicant in this matter. A previous study had been made of the assets of Edison Light & Power Company in reference to a prior rate case, and it was necessary to revise that study for presentation to the special master. The request does not appear unreasonable.

Tradesmens National Bank and Trust Company

Tradesmens National Bank and Trust Company request an interim maximum allowance of $2,500 for services rendered as indenture trustee during the period November 30, 1937, to November 1, 1941. This trust company and its predecessor have been trustee for bondholders since December 1, 1907, the issue date of the bonds. Since the year 1931 it has received a yearly compensation of $500 as trustee for bondholders for holding the securities of York's subsidiaries as collateral for the bonds, for the supervision of payment of taxes and insurance, for the receipt of interest and the forwarding of such payments to the paying agent for actual payment to bondholders, and for the receipt and cremation of the canceled coupons. However, from the time of the institution of the reorganization proceedings, applicant states that additional services have been required which were not contemplated as part of the yearly retainer and for which extra compensation is requested at this time.

A portion of the extra services was the work done in release of a large number of liens upon the realty and rights of way of York for abandonment purposes. Applicant sent notice to bondholders that a total abandonment was contemplated. As York was abandoning all its railway operations contrary to the terms of the trust indenture, some procedure was required to be effected to substitute new collateral therefor. Applicant helped perfect the procedure whereby, after the scrap iron was sold and payments were made, applicant checked the payment with the inventory and the report of the auctioneer of the sale price of each specific portion of track, and thereafter applied the proceeds to payment of the compromised claims of the state highway department and the various municipalities and to repaving and other expenses. A total of $187,768.11 was received in the scrap salvaging operations, and $172,895.48 was paid out. On this problem it was necessary that 588 postings be made, which covered the period from March 15, 1939, to about August 1, 1940. For these items a total of 445 hours was expended by employees of trustee.

At the time York failed to meet its obligations at the maturity date of the bond issue, notices were sent to the subsidiaries of the debtor that all payments thereafter should be made to trustee and not to debtor. In addition the applicant appeared at various conferences with the Pennsylvania Commission relative to the dividend and interest payments of the Edison Light & Power Company to debtor, and relative to the reduction of the interest on a note of Edison Light & Power Company which was held by York. A proof of claim on behalf of all the bondholders was filed in the district court. Some work was also performed by the trustee upon the exemption petition, filed by York with this Commission, requesting that York be declared not a subsidiary of a registered holding company. Other additional work was performed at various hearings before the court, the special master, and the Pennsylvania Commission, wherein officers of applicant appeared either as witnesses or to present the views of the trustee.

A reasonably accurate estimate of the time expended on the extra services

by the employees of applicant is said to be 555 hours. Of course, a great number of these hours represent time expended by minor employees in making postings of the sale of scrap and other matters requiring routine handling. However, considerable time was expended by responsible officers who were required to give their best judgment to the problems presented. The request for an interim allowance of not more than $2,500 for the extra services performed by applicant for the period November 30, 1937, to November 1, 1941, does not appear unreasonable.

Evans, Bayard, and Frick

Evans, Bayard, and Frick has requested a maximum interim allowance of $5,000 for services rendered as counsel to Tradesmens National Bank and Trust Company, trustee for bondholders, for the period November 30, 1937, to November 1, 1941. Evans, Bayard, and Frick is general counsel of the Tradesmens National Bank and Trust Company and has acted in that capacity for the trustee in this proceeding. The services performed by applicant were rendered primarily by Francis H. Scheetz, a partner, and by Robert Gibbon, as associate from September, 1938, to January, 1941, and a partner thereafter.

Applicant consulted with the indenture trustee regarding the problems discussed above in connection with the trustee's application.[23] It prepared all the legal papers, consulted with the trustee, with counsel for York and with others, and from time to time, prepared memoranda of law applicable to the various problems. Applicant appeared before the Pennsylvania Commission and before the court in opposition to the abandonment of rail service as being contrary to the terms of the trust indenture which required the debtor to maintain a street railway system. After approval for abandonment was granted, applicant appeared before the court on the matter of procedure relative to the sale of salvaged scrap.

When the Pennsylvania Commission instituted proceedings to require York to purchase bonds and not to pay interest thereon, applicant appeared before that Commission and persuaded it to abandon that position. Applicant also appeared as counsel for the trustee in the hearings before this Commission on the exemption application of York from the Public Utility Holding Company Act of 1935.

It is estimated that a total of 300 hours has been expended by members of firm of applicant on these problems, which do not appear to have been complex or directly to have furthered a speedy reorganization. This is a petition for an interim allowance which is presented at a time when no substantial progress has been made toward reorganization. Unquestionably, applicant will be required to perform other services before a plan of reorganization is finally approved, at which time the utility of applicant's services in the reorganization will be more readily ascertainable.

Under the circumstances and taking into consideration the time spent on York's problems, the nature of the

[23] In so far as the consultations of applicant dealt with questions of business policy rather than with purely legal problems, applicant is not entitled to compensation from York. See Rauscher v. Northwest Cities Gas Co. (1941) 41 F Supp 566, 570.

services rendered, the present status of the reorganization, and all other relevant matters, we do not believe the interim allowance presently to be paid applicant for the period between November 1, 1937, and November 1, 1941, should exceed a maximum of $3,000.

An appropriate order will issue.

ORDER

Applications having been filed by Saul, Ewing, Remick & Harrison; Manuel Kraus and I. H. Krekstein; Tradesmens National Bank and Trust Company; Evans, Bayard, and Frick; and Day & Zimmerman, Inc., pursuant to § 11(f) of the Public Utility Holding Company Act of 1935 and Rule U-63 promulgated thereunder, for approval of the maximum amounts that may be presently paid to said applicants for services rendered in connection with the reorganization of York Railways Company, a subsidiary of NY PA NJ Utilities Company, a registered holding company, and an indirect subsidiary of Denis J. Driscoll and Willard L. Thorp, trustees of Associated Gas and Electric Corporation, a registered holding company, such reorganization of said York Railways Company in which the debtor is in possession being now pending before the United States district court for the eastern district of Pennsylvania;

Public hearings having been held upon such applications, after appropriate notices, and the interested parties having waived submission of proposed findings of fact, filing of briefs and oral argument; the Commission having considered the record and having made and filed its findings and opinion herein;

It is *ordered* that the following amounts be, and the same hereby are, approved as maximum allowances for services rendered that may presently be paid out of the estate of York Railways Company, debtor in possession:

To: Saul, Ewing, Remick & Harrison, maximum interim allowance for period November 30, 1937, to December 31, 1941 ..... $15,000.00

Kraus and Krekstein, maximum final allowance in full compensation for services rendered in settling Pennsylvania capital stock tax of debtor for years 1928–1940 ..... $6,000.00

Evans, Bayard, and Frick, maximum interim allowance for period November 30, 1937, to November 1, 1941 $3,000.00

Tradesmens National Bank and Trust Company maximum interim allowance for period November 30, 1937, to November 1, 1941 ..... $2,500.00

Day & Zimmerman, Inc., maximum final allowance for period November 30, 1937, to December 31, 1941, in full compensation for services rendered as expert witness with respect to valuation of debtor for purposes of plan of reorganization $623.46

Re Ohio Fuel Gas Company et al.

[Docket Nos. G-408, G-410, Opinion No. 81.]

Certificates of convenience and necessity, § 53.5 — When required under Natural Gas Act — Grandfather rights.

1. A certificate of convenience and necessity is required under § 7(c) of the Natural Gas Act, 15 USCA § 717f(c), for the construction, installation, and operation of a natural gas pipe line connecting facilities of two companies engaged in the transportation and sale for resale of natural gas in interstate commerce, notwithstanding the fact that there is a pending application by one of the companies for a certificate under the "grandfather" clause of § 7(c) of the act, p. 166.

Certificates of convenience and necessity, § 104 — Natural gas pipe line — Threatened gas shortage.

2. The requirements in the Natural Gas Act for the issuance of a certificate authorizing the construction, installation, and operation of a natural gas pipe line connecting facilities of two natural gas companies are satisfied when there is an apparent need for additional sources of gas to meet a threatened shortage during war and the availability of the reserves of one of the companies through the project indicate that it would both serve in the present situation and be available for service in the future, p. 167.

Certificates of convenience and necessity, § 90 — Choice of applicant — Natural gas pipe line.

3. Public convenience and necessity would be better served by the issuance of a limited certificate, authorizing construction and operation of a natural gas pipe line connecting facilities of two companies, to a company willing to do what is required to serve both the present and future public convenience and necessity in the affected area, than by the issuance of a certificate to a company which may not be free from the restraining effect of a Federal injunction, which makes a higher estimate of construction costs, and which proposes that the project be considered only as a war emergency measure authorized by a temporary certificate, where both companies are qualified, financially and in ability and experience, to construct, install, and operate the proposed project, p. 168.

[October 2, 1942.]

CONFLICTING *applications requesting certificates of public convenience and necessity authorizing the construction, installation, and operation of a natural gas pipe-line connection pursuant to § 7(c) of the Natural Gas Act; granted as to one applicant and denied as to the other.*

APPEARANCES: Freeman T. Eagleson and F. J. Beebe, for the Ohio Fuel Gas Company; Glenn W. Clark, for the Panhandle Eastern Pipe Line Company; Robert J. Bulkley and Arthur G. Logan, for the Missouri-Kansas

Pipe Line Company; Kenneth L. Sater, for the Public Utilities Commission of Ohio; Spencer W. Reeder, for the city of Cleveland, Ohio; Joseph Nathanson, for the city of Toledo, Ohio; James H. Lee, for the city of Detroit, Michigan; Harold Goodman, for the county of Wayne, Michigan; Henry A. Montgomery, for the Michigan Consolidated Gas Company; James W. Haley, for the National Coal Association; Harry S. Littman and William B. Spohn, for the Federal Power Commission.

By the COMMISSION: These matters involve conflicting applications filed by Panhandle Eastern Pipe Line Company and The Ohio Fuel Gas Company pursuant to § 7(c) of the Natural Gas Act, 15 USCA § 717f (c), as amended, requesting certificates of public convenience and necessity authorizing the construction, installation, and operation of a natural gas pipe line connecting their facilities in the vicinity of Toledo, Ohio.[1]

After notice, a public hearing was held on the applications. The Missouri-Kansas Pipe Line Company, the Public Utilities Commission of Ohio, the city of Cleveland, the city of Detroit, and the county of Wayne intervened in the proceedings and were represented at the hearing. The city of Toledo did not intervene but was represented at the hearing. The National Coal Association was also represented and filed a protest, but did not intervene. Briefs were filed by both applicants, and by the Missouri-Kansas Pipe Line Company, the Public Utilities Commission of Ohio, the city of Cleveland, the city of Detroit, and the county of Wayne.

[1] Hereinafter, The Ohio Fuel Gas Company is referred to as "Ohio Fuel" and Panhandle Eastern Pipe Line Company as "Panhandle Eastern."

The Issues

Three issues are presented by these matters:

1. Should a certificate of public convenience and necessity be issued for the proposed project?

2. If so, to which applicant should the certificate be issued?

3. What, if any, conditions should attach to the certificate?

Jurisdiction

[1] Ohio Fuel contends that, pending our determination of its application for a certificate under the "grandfather" clause of § 7(c) of the Natural Gas Act, as amended, a certificate is not required for the proposed construction or for the acquisition of facilities or extensions within its service area. The record before us, however, clearly shows that both applicants are engaged in the transportation and sale for resale of natural gas in interstate commerce. Moreover, § 7(c), as amended, requires that no natural-gas company shall undertake the construction or extension of any facilities for the transportation or sale of natural gas subject to our jurisdiction, or acquire or operate any such facilities or extensions thereof, without having secured from us a certificate of public convenience and necessity authorizing such acts or operations. The language of the statute is clear and convincing. To accept the contention of Ohio Fuel would result in defeating the expressed intention of Congress in amending § 7. We conclude, therefore, that such contention is untenable and must be re-

jected. Both applicants are not only natural-gas companies as defined in the Natural Gas Act, but under the circumstances here present they are required to obtain specific approval for the proposed construction.

The Facts

[2] The record before us shows that the steadily increasing demands upon the supply of natural gas in the Appalachian area, from which source Ohio Fuel is supplied, required the curtailment of deliveries in some instances during the past year and may necessitate further curtailment with consequent disruption of war production in the near future. This situation, first reported in the Appalachian survey made by our staff for the War Production Board early this year, led the Board to request the applicants to effect an interconnection of their pipeline facilities in the vicinity of Toledo.

The project here proposed will consist of a 16-inch natural gas pipe line extending some 88,700 feet from a point on the main 22-inch line of Michigan Gas Transmission Corporation [2] (a wholly owned subsidiary of Panhandle Eastern) to Detroit, near the Ohio-Michigan state line in Lucas county, Ohio, and connecting with the 16-inch line of Ohio Fuel to Toledo at a point immediately west of the village of Maumee, Ohio.

The War Production Board has issued a preference rating order for the necessary materials in the alternative to Ohio Fuel or Michigan Gas, whichever is authorized by us to construct and operate the project. The pipe is now being rolled and can be installed by either company within thirty days of delivery, at a total cost estimated by Panhandle Eastern at $394,000 and by Ohio Fuel at $410,815.

Panhandle Eastern has gas reserves approximating 2.4 trillion cubic feet—sufficient to meet its presently estimated demands for more than twenty-five years—and has negotiations pending for reserves approximating an additional 1.5 trillion cubic feet. While it does not now have any firm gas available for sale through the proposed project, Panhandle Eastern has available some 20 billion cubic feet per year dump or floating gas which it is willing to sell Ohio Fuel during the months of April through October. The addition of certain looping facilities, for which the War Production Board has been asked to approve the use of necessary materials, would make up to 51 million cubic feet of natural gas available on some peak days to Ohio Fuel through the proposed project.

Ohio Fuel has gas reserves approximating 350 billion cubic feet, which it claims are sufficient to supply its presently estimated requirements for some twenty years. In addition, it has long-term contracts for the purchase of natural gas from United Fuel Gas Company and others in the Appalachian area. Ohio Fuel maintains that it has sufficient gas available to serve all its estimated demand, but admits that it could advantageously receive gas through the proposed project to relieve its Toledo and other requirements and for storage in its extensive underground storage areas. These storage areas, which now contain some 18 billion cubic feet of natural gas and can receive an additional 1½ to 2 billion cubic feet, may be increased by 4 to 5

[2] Hereinafter referred to as "Michigan Gas."

billion cubic feet in available adjacent areas.

Estimates of the amount of gas to be delivered through the proposed project range as high as 10 billion cubic feet per year, depending upon the extent of use to which the proposed pipe line may be put.

The apparent need for additional sources of gas to meet the threatened shortage in the Appalachian area, and the availability of the reserves of Panhandle Eastern through the project, indicate that it would both serve in the present situation and be available for service in the future. The project would therefore satisfy the requirements in the Natural Gas Act, as amended, for the issuance of a certificate of authorization.

It is significant that no opposition to the project was offered at the public hearing or elsewhere, other than the suggestion by the National Coal Association that the authorization be limited to the period of the present war emergency. During the course of the proceedings, the Public Utilities Commission of Ohio requested that our action should not affect its efforts to control the stabilization of natural gas. The city of Toledo suggested its interest in having available an additional source of gas supply upon the expiration in 1944 of its present contract with Ohio Fuel. The city of Detroit and the county of Wayne requested that the proposed project, if authorized, should not prejudice their pending rate proceedings nor affect their supply of gas from Panhandle Eastern, or the latter's full performance of its obligations to its present customers. They also requested that the proposed pipe line should not be built with any impediment preventing the reverse flow of gas. We are in substantial accord with these suggestions and believe that the conditions hereinafter provided are reasonable and will suffice to accomplish their purposes.

Choice of Applicant

[3] Section 7(e) of the Natural Gas Act, as amended, prescribes the standards by which certificates of public convenience and necessity are to be granted or denied. It prescribes that, if the proposed service is or will be required by the present or future public convenience and necessity, a certificate shall be issued to any qualified applicant found able and willing properly to do the acts and perform the service proposed and conform to the provisions of the act and the requirements, rules, and regulations of the Commission thereunder. The section further provides that otherwise an application for a certificate shall be denied.

In the instant proceedings, we are required to make a choice between applicants. The record discloses that the applicants are qualified, financially and in ability and experience, to construct, install, and operate the proposed project. They differ, however, in their willingness to construct and operate the project and in their estimates of its relation to the present and future public convenience and necessity. Ohio Fuel may not be free from the restraining effects of a Federal injunction. Panhandle's estimates of construction cost are somewhat less than those of the other applicant.

Ohio Fuel proposes that the project should be considered only as a war emergency measure, that its cost should be amortized over a 5-year period, and

that it should be authorized by a temporary certificate limited both in time and scope to the duration of the present war emergency. In fact, it sees no need for the project except as requested by the War Production Board as a war emergency measure.

Panhandle Eastern, on the contrary, proposes that the connection should be permanent and that it should be authorized by a regular certificate unlimited in duration. It considers the connection as permanently necessary to serve both present war needs and future requirements occasioned by the rapidly depleting supply of natural gas in the Appalachian area.

To choose between such applicants requires our consideration of all factors in the situation before us and, ultimately, the exercise of that administrative discretion with which Congress has vested us for such purposes. The record shows that the present corporate affiliation between Panhandle Eastern and Ohio Fuel is in the process of severance and Panhandle Eastern is more willing to do what is required to serve both the present and future public convenience and necessity in the affected area. Its construction and operation of the project would permit the delivery by it of natural gas to Ohio Fuel in the vicinity of Toledo, as requested by the War Production Board. A certificate issued to Panhandle Eastern would not only permit the use of the proposed facilities during the present war emergency, but would also make available an additional source of supply in the Ohio market thereafter, to the possible advantage of the consuming public. Upon the record before us, we are convinced that the public convenience and necessity would be better served, both now and in the future, by the issuance of a limited certificate authorizing the proposed construction and operation by Panhandle Eastern (including its wholly owned subsidiary, Michigan Gas) for a period of five years or for the present war emergency, whichever is longer. The certificate should be so conditioned as to assure the present and future operation of the project in the public interest, including substantially the proposals of the state and municipal authorities hereinbefore mentioned.

Conclusions

It is our conclusion that a limited certificate of public convenience and necessity should be issued for the construction and operation of the proposed pipe line connecting the facilities of Panhandle Eastern (including its wholly-owned subsidiary, Michigan Gas) and Ohio Fuel in the vicinity of Toledo, Ohio, in order to relieve the present and prospective shortage of natural gas in the Appalachian area.

Such limited certificate should be issued to Panhandle Eastern (including its wholly owned subsidiary, Michigan Gas) for a period of five years or for the present war emergency, whichever is longer, subject to such reconsideration and further orders as the future public convenience and necessity may require, and upon the usual conditions and the following special conditions that:

(1) The project shall be so constructed and operated as to permit the movement, pressuring, and measurement of natural gas in either direction.

(2) The use of the proposed pipe line shall be limited to such periods of

time and such quantities of natural gas as will not impair the ability or capacity of Panhandle Eastern (including its wholly owned subsidiary, Michigan Gas) to serve and fully meet its obligations to its present customers.

(3) Nothing contained in the certificate shall be taken or construed as affecting in any way the authority of any state, municipal, or other qualified agency in respect to the stabilization of natural gas, particularly by the use of inert or so-called reformed gas as a diluent.

Finally, under all the circumstances relating to the situation before us, it is our considered opinion that the application of Ohio Fuel for a certificate should be denied.

An appropriate order will be issued in accordance with this opinion.

ORDER

Upon consideration of the entire record herein, and having today issued its Opinion No. 81, which is made a part hereof by reference;

The Commission finds that:

(1) The Ohio Fuel Gas Company and Panhandle Eastern Pipe Line Company are engaged in the transportation and sale for resale of natural gas in interstate commerce and are natural-gas companies as defined in the Natural Gas Act;

(2) The threatened shortage of natural gas in the Appalachian area will be relieved by the construction and operation of the proposed 16-inch pipe line extending some 88,700 feet from a point on the main 22-inch line of Michigan Gas Transmission Corporation (a wholly owned subsidiary of Panhandle Eastern Pipe Line Company) to Detroit, near the Ohio-Michigan state line in Lucas county, Ohio, and connecting with the 16-inch line of The Ohio Fuel Gas Company to Toledo at a point immediately west of the village of Maumee, Ohio;

(3) The War Production Board has assigned a preference rating order for the materials necessary for the proposed pipe line;

(4) The public interest requires the issuance of a limited certificate of public convenience and necessity authorizing Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation) under the conditions hereinafter provided, to construct, install, and operate the pipe line specified in par. (2) above for a period of five years or for the present war emergency, whichever is longer;

(5) Under the circumstances, the application of The Ohio Fuel Gas Company for a certificate of public convenience and necessity for the construction, installation, and operation of the aforesaid pipe line should be denied;

The Commission *orders* that:

(A) A limited certificate of public convenience and necessity be and it hereby is issued to Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation) authorizing construction, installation, and operation of the pipe line described in par (2) above, and as shown in the application therefor, for a period of five years or for the present war emergency, whichever is longer, subject to such reconsideration and further orders as the future public convenience

and necessity may require and upon the following express terms and conditions:

(i) Upon completion of such construction and installation, but not later than December 5, 1942, Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation) shall file in writing and under oath, a statement of such completion and installation; and thereafter when the pipe line is put into service, shall file in writing and under oath a statement showing the date such service commences and the nature thereof;

(ii) This limited certificate shall not be transferable except upon express approval of the Commission; shall be without prejudice to the authority of the Commission over rates, valuation, costs, services, accounts, or any matters whatsoever with respect to Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation) or its facilities, or any proceeding relating thereto; and nothing herein shall be construed as affecting in any manner the determination of the service areas of Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation) or The Ohio Fuel Gas Company under § 7(f) of the Natural Gas Act, as amended;

(iii) The pipe line hereby authorized shall be so constructed and operated as will permit the movement, pressuring, and measurement of natural gas in either direction;

(iv) The use of the pipe line hereby authorized shall be limited to such periods of time and such quantities of natural gas as will not impair the ability or capacity of Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation) to serve and fully meet its obligations to its present customers;

(v) Nothing contained in this limited certificate shall be taken or construed as affecting in any way the authority of any state, municipal, or other qualified agency in respect to the stabilization of natural gas, particularly by the use of inert or so-called reformed gas as a diluent;

(vi) In the event of failure of Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation) to comply with any of the terms and conditions contained herein, or with any of the provisions of the Natural Gas Act, as amended, or of the pertinent rules, regulations, or orders heretofore or hereafter issued by the Commission, this limited certificate shall cease to have any force or effect;

(B) Appropriate evidence of the issuance of this limited certificate shall be furnished Panhandle Eastern Pipe Line Company (including its wholly owned subsidiary, Michigan Gas Transmission Corporation);

(C) The application of The Ohio Fuel Gas Company for a certificate of public convenience and necessity for the construction, installation, and operation of the aforesaid pipe line be and it is hereby denied.

MISSOURI PUBLIC SERVICE COMMISSION

Re J. M. Kurn et al. Trustees, St. Louis-San Francisco Railway Company

[Case No. 10,235.]

Service, § 150 — Duty to serve — War conditions.

1. Common carriers are faced with an obligation to serve the public, and not always with a profit, and in a period of war they are more seriously than ever obligated, p. 176.

Service, § 150 — Duty to serve — Aid in war effort.

2. The first and paramount duty of common carriers during a war period is to serve the government in the successful prosecution of the war, and, secondly, they must continue with all their efforts to render normal service to the public when such rendition does not conflict with their duty to the country as a whole, p. 176.

Service, § 221 — Discontinuance — Effect of war.

3. Discontinuance of railroad service which is a conveninence to the people during a period of war should not be authorized when such discontinuance is not required, p. 176.

Service, § 265 —Discontinuance — Railroad trains — War period.

4. Discontinuance of railroad trains during a period of war should not be authorized when this would deny necessary traveling facilities and require people to cease and desist contact with neighbors, friends, and relatives, including those in the armed forces, particularly where a steady increase in traffic is indicated, p. 176.

[October 23, 1942.]

APPLICATION *for consent to discontinue operation of rail motor trains; denied.*

By the COMMISSION: This matter before the Commission is an application of J. M. Kurn and John G. Lonsdale, trustees, St. Louis-San Francisco Railway Company, debtor, for consent to discontinue operation of rail motor trains between Hayti, Missouri, and Brooks Junction, Missouri.

This application was set down for hearing before the Commission at the circuit court room in the courthouse at Kennett, Missouri, on the 22nd day of September, 1942, and on that date was heard by a member of the Commission. The applicant (to be hereafter referred to as the carrier) appeared by its counsel and protestants, cities of Kennett, Senath, Hayti, Campbell, Malden, and Canalou appeared by attorney. Also appearing as protestants were the Brotherhood of Railroad Trainmen, Order of Railroad Conductors, Brotherhood of Locomotive Engineers, and Brotherhood of

Firemen and Engineers. These associations were represented by counsel.

Prior to giving a resumé of the evidence submitted in support of and against this application it might be well to briefly sketch and outline some of the history surrounding this railroad operation in question. The railroad over which the trains herein discussed, operate, is known as a branch line of the St. Louis-San Francisco Railroad. It connects with the main line of the railroad, which main line serves between St. Louis and Memphis, Tennessee, at a point known as Brooks Junction and from Brooks Junction this branch line traverses through a portion of Scott county, New Madrid county, and on through Dunklin county into Pemiscot county at Hayti where it again connects with the Frisco main line. These trains now in question are what remains of the train service described by "old timers" as Ham's train. The inception of this service known as "Ham's train" antedates no doubt the recollection of most of the witnesses in this hearing. It was started back in the days when this great section of the state was being pioneered. For many years it was the connecting link between the fertile county of Pemiscot and the productive fields and thriving communities in Dunklin county. The area intervening between Hayti and Kennett was for a long, long time a dismal, impassable swamp and the only connecting link over this impassable area was this branch line railroad. In the years preceding and up to about the early twenties, thousands of timber workers, laborers, salesmen, and ordinary travelers used this famous branch line railroad. Then came successful drainage and it was followed by highways and automobiles. Timber rapidly disappeared and with it many thousands of timber workers and the great swamp area heretofore impassable rapidly developed into highly productive farm lands and became densely populated. Today very few sections of our country exceed this area in density of population. Pemiscot county with a population of almost 50,000 and Dunklin county with approximately 47,000, and the border counties of New Madrid and Scott with near comparable density in population. So with the advent of the highways and motor transportation the enormous volume of traffic of the branch line railroad began to diminish and the famous "Ham's train" became the motor car operation we now have today. The trains presently consist of a motor car and a combination baggage and express car. To many thousands of people in this area this train is truly an institution.

The testimony submitted by the applicants in support of their application was substantially as follows: Three witnesses testified for the applicants, one being the passenger traffic manager and one being an accountant for the trustees, and the other being the superintendent of the river division of the carrier. The testimony of these three witnesses developed that the passenger train in question between Hayti and Brooks Junction consists of the rail motor train No. 882, which leaves Hayti daily at 6:30 A. M. and runs through Kennett, Campbell, and Malden to Brooks Junction, arriving at this point at 11:15 A. M. The towns of Campbell and Malden are reached by side trips from Gibson to Campbell and Clarkton to Malden. Returning

in the opposite direction this train becomes No. 881 and leaves Brooks Junction at 1:25 P. M. arriving at Hayti at 6:05 P. M. These trains make stops at all intermediate stations for the accommodation of passengers, mail, baggage, express, cream traffic, and connections are made at both Hayti and Brooks Junction with the main line trains of the railroad between St. Louis and Memphis. The equipment of the train consists of a motor car, seats for passengers, and a combination baggage and express car with a 15-foot compartment for mail and 35-foot space for express and other matters handled in the baggage car. It is contended by the carrier that these trains operate at approximately $1,000 per month loss.

The witnesses further contend that the train is lightly patronized and the equipment should be released. It was further shown by the witnesses that the carrier proposes to serve this area with a mixed train operating between Hayti and Kennett daily except Sunday, between Kennett and Brooks Junction northbound on Tuesday, Thursday, and Saturday and southbound on Monday, Wednesday and Friday leaving Brooks Junction at 6:35 A. M. and arriving at Kennett at 11:10 A. M. The above trains, both northbound and southbound, would make side trips from Gibson and Campbell serving Clarkton and Malden. The witnesses also stated that in their opinion practically all the points were served by busses. The witnesses stated that if the trains were discontinued the Postoffice Department would no doubt make such arrangements as are necessary for the proper handling of the mail and that the busses would be available to handle express.

One of the witnesses for the carrier, from the accounting department, testified in detail concerning the exhibits touching revenue and expenses. The superintendent described the operation of these two trains and stated that he understood the principal reason for the proposed discontinuance was on account of the financial loss; that the equipment was not of a type to be used elsewhere in the war effort. This witness also described the operation of the mixed or local train which is proposed to be used over this line serving the towns in question.

Exhibit A offered by the applicant is a timetable covering the trains in question and some connections therewith.

Applicant's Exhibit B is a statement describing the train schedule of trains 881 and 882, the equipment, and the statement that the operations are resulting in about $1,000 per month loss. Also is shown the schedule of the mixed or local train which the carrier proposes to use in serving the area. Also is named several bus companies operating between certain towns on the line.

Applicant's Exhibit C is a blueprint map showing the route of the carrier from Brooks Junction to Hayti.

Applicant's Exhibit D shows the population of the 29 towns on the carrier's line between Brooks Junction and Hayti.

Applicant's Exhibit E shows the bus schedules of the Missouri Pacific Trailways which serves from Cairo, Illinois, through Sikeston and Morehouse to Poplar Bluff (Morehouse being a point on the rail line). It shows the

time schedule of Scofield Bus Line running from Poplar Bluff through Campbell, Gibson, Holcomb, Frisbie, White Oak, and Kennett, all the towns, except Poplar Bluff, being on the rail line. It also shows the time schedule of Great Southern Coaches, Inc., running from Cape Girardeau through Malden, Clarkton, Holcomb, Frisbie, White Oak to Kennett, all the towns, except Cape Girardeau, being on the carrier's rail line. Another schedule of the Great Southern Coaches, Inc., runs from Sikeston through New Madrid, Lilbourn, Risco, Malden, McGuire to Campbell, all of the towns of this schedule being on the carrier's line except Lilbourn, New Madrid and Sikeston. The exhibit further shows the time schedule of the Frisco Transportation Company running from Kennett through Bragg City, Pascola to Hayti, all of the points being on the carrier's line.

Applicant's Exhibit F is a statement showing the estimated earnings and direct expenses for passenger trains 881 and 882 operated between Brooks Junction and Hayti for the month of August, 1942. This exhibit indicates a deficit for that month of $1,089.71.

Applicant's Exhibit G is a statement showing the number of revenue passengers handled on trains 881 and 882 operating between Brooks Junction and Hayti for each month from January, 1941, to and including August, 1942. This exhibit indicates that for the year 1941 the trains handled 23,189 passengers and for the first eight months of 1942 the trains handled 16,356 passengers, the monthly average for 1941 being 1,932 and the average for the first eight months of 1942 being 2,044.

Applicant's Exhibit H is a statement showing the ticket sales by months for each agency station on the line, Vanduser through Malden, Campbell, and Kennett to Pascola for the twelve months August, 1941, to July, 1942. This exhibit did not disclose ticket sales for the agency station at Hayti applicable to these two trains. This exhibit indicates that these stations sold for the period from August, 1941, to July, 1942, both inclusive (Hayti excepted), $9,929.28 of railway tickets.

The protestants offered the testimony of many witnesses from Malden, Kennett, Risco, Campbell, Holcomb, and Parma. These witnesses were businessmen, postmasters, and professional men. All of their testimony was practically along the same line. They urged the retention of these trains on account of the present tire and automobile rationing, prospective gasoline rationing, and the presently croweded condition of the busses. A great number of these witnesses who have occasion to use the busses operated in the area stated that the busses now were crowded and without question when gasoline rationing becomes effective they could not meet the demands of the traveling public. The several postmasters described the inconvenience and delays which would result if the present mail connection at Brooks Junction with the main line of the carrier railroad was discontinued. It was shown by the numerous witnesses that under the present operation of the various Federal and county agencies, located at Kennett, transportation facilities will be required to handle people coming into Kennett for matters in connection with these agen-

cies. The chairman of the rationing board for Dunklin county, in stressing the seriousness of the transportation problem in the area, stated that the passenger tire allotment for Dunklin county in the present monthly period was six passenger tires. Dunklin county has a population of approximately 47,000 people. Attention of the Commission was directed by the protestants to the fact that the exhibits of the applicant indicated an increase in traffic and revenue and that the expenses as shown in the exhibits were compiled on estimated figures rather than actual. Many of the witnesses testifying frankly admitted that they had not ridden these passenger trains for many years but it was their opinion that upon the institution of gasoline rationing they would be required to use these trains in order to reach point to point in this area.

One witness particularly stressed the fact that the express business over this line was of such volume that it would be impossible for it to be handled by busses. Another witness at great length described the history of the railroad throughout this area calling attention to the fact that this section had contributed much to the upbuilding of the railroad and its services were now once more urgently needed by these several communities.

Protestants' Exhibit 1 was introduced without objection on the part of the applicant. This exhibit consisted of resolutions protesting the removal of these trains. They came from the Lions Club at Malden, the Board of Aldermen of Morehouse, Vanduser and city of Canalou, the Businessmen's Club of Clarkton, the Rotary Club of Campbell, the Lions Club of Senath, and the Lions Club of Hayti. It also contained petitions from many points in Pemiscot, Dunklin, New Madrid, and Scott counties. These petitions contained hundreds of signatures of businessmen, professional men, and farmers in their respective communities. The removal of these trains would leave Kennett and a great portion of the area without rail passenger service.

[1–4] We think the foregoing sufficiently digests the testimony presented for and against the application. The Commission has in recent years had before it many applications of rail carriers to abandon train service and close agency stations, which the rail management deemed wise and economical. The Commission has realized the problem facing the railroads and in all cases endeavored to help them adjust these situations, bearing in mind both the welfare of the carrier and the convenience to the communities. In some instances we have authorized the discontinuance of trains and permitted the closing of agency stations over vigorous protests of communities for we thought that the action sought by the carrier would result in a better over-all condition for the railroads and ultimately permit them to render more efficient service to the general public. But now the country is at war; times and conditions are not normal. The usual standards to gauge economy and convenience cannot always be used. The Commission must bear in mind its primary duty is to require that proper service, consistent with all the conditions existing, be rendered by these public utilities. Common carriers are faced with an

obligation to serve the public and not always with a profit. Many circumstances and conditions affect their operations but now in this period of war they are more seriously, than ever, obligated. Their first and paramount duty is to serve the government in the successful prosecution of the war and, secondly, they must continue with all their efforts to render normal service to the public when such rendition does not conflict with their duty to the country as a whole. Sacrifices for victory of this war must be equally borne by the carriers and the public. In the prosecution of the war the American people are prepared and willing to make any necessary curtailment to their ordinary way of living; to aid the war effort, automobile tires and gasoline can all be eliminated and not a grumble will come from our people if they feel such is required and that the proper Federal and state authorities will continue to be alert to guard against abuse of their privileges. We therefore are mindful that our duty requires that every curtailment of service to the people be carefully examined to determine a necessity therefor. All facilities must be used to their capacity. We cannot aid in curtailing a single convenience to the people which is not required. The citizenry, though making every needed sacrifice, still desires to retain as many of the conveniences of their normal lives as possible. We do not think that for the good of our morale the people should be denied necessary traveling facilities and require them to cease and desist contacts with neighbors and friends in other localities when facilities are available. Fathers and mothers, relatives and friends want to and will visit their own in military camps and fields and this they must not be denied unless and until the stoppage of all travel is an absolute necessity to win the war. Possibly millions of our youth in the armed forces will desire to visit their people at home on furloughs. This too must not be denied.

So now in this instant application with the use of automobiles restricted, tires so severely rationed as indicated by testimony in this case (six passenger tires in one month to a county of 47,000 population), gas rationing effective now in the near future (no doubt for the duration), the people in this particular area served by the carrier do look to this Commission and the carrier to aid them in the daily conduct of their lives and affairs. The exhibits of applicant show a steady increase in traffic, one such indication is the 20 per cent increase for the period of March, 1942 to July, 1942, both inclusive, over the last four months of 1941. With none of the usual heavy traffic of the fall months included, we believe the increase will continue. The carrier insists that it has a monthly loss of approximately $1,000. A careful examination of all the exhibits discloses this calculation is not an exact amount but is based on estimates and percentages ordinarily used by the accounting department of the carrier; but as we have heretofore suggested these are not normal times and though we should be in error in thinking these trains may in the near future be profitable, the carrier must and should help carry the burden of the war and if necessary look to over-all operations of its system to ease the loss of such a

branch line, when such branch line so seriously affects the people in such a densely populated area.

Without further discussion we are of the opinion that the application should be denied.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Limited Liability Rates

[Case 10479.]

Rates, § 427.2 — Motor carriers — Variation based on liability.

1. Rate variations for shipments of furniture, home furnishings, and antiques due to the varying liability of motor carriers are generally in the public interest, and it is reasonable to provide that where shippers are willing to limit the liability of the carrier to specific amounts, lower rates should be established, p. 181.

Rates, § 187 — Burden of proof — Motor carrier rates — Limited liability.

2. It is not sufficient to establish the reasonableness of proposed limited liability motor carrier rates of some character, but the rates must be specific and there should be proof that they are just and reasonable, p. 181.

Rates, § 134 — Reasonableness — Comparison with other rates.

3. The reasonableness of proposed motor carrier rates cannot be established by the fact that certain rates have been charged in other jurisdictions, particularly where there has been no ruling by other authorities upon detailed facts duly presented that such rates are just and reasonable, p. 181.

Rates, § 427.2 — Motor carriers — Limited liability rates — Evidence of reasonableness.

4. The reasonableness of limited liability rates can be established by showing what carriers have actually had to pay for loss and damages by classes of property and length of haul, and by showing the experience of insurance companies in meeting losses under policies which have been issued, this being a guide as to what premiums should be charged, p. 181.

Expenses, § 20 — Accidents and damages — Questions of liability.

5. Expenses of motor carriers in determining losses and conducting lawsuits should be allowed in determining limited liability motor carrier rates, p. 181.

Rates, § 427.2 — Motor carriers — Sufficiency of evidence — Limited liability rates.

6. Testimony presented no foundation for a finding that proposed limited liability motor carrier rates were reasonable, where it showed no relationship between the rates and insurance rates covering proposed shipments and where the basis submitted was "the present setup under the I.C.C.," it not being shown whether the question of reasonableness of the interstate rates had ever been decided, p. 182.

Rates, § 427.2 — Motor carriers — Limited liability rates — Sufficiency of evidence.

7. Testimony which was vague and indefinite so far as the relation of cost of insurance to varied values was concerned furnished no basis for determining what were reasonable limited liability transportation rates or what differentials should be recognized for varying values, p. 182.

Rates, § 186 — Presumptions — Limited liability rates.

8. Limited liability rates may not be presumed; they can be established only after Commission approval has been obtained, p. 182.

Rates, § 427.2 — Motor carriers — Limited liability rates — Sufficiency of evidence.

9. Evidence that proposed limited liability motor carrier rates conform to the carrier's interstate tariff; that the proposed rates were predicated on the assumption that there was limited liability; and that intrastate operators have to meet competition of interstate carriers who charge limited liability rates does not establish the reasonableness of the proposed rates, p. 182.

Rates, § 427.2 — Motor carriers — Limited liability rates.

10. Either basic transportation rates are higher than they should be or proposed additional charges covering motor carriers' liability would result in discrimination against the shipper using the basic scale, where evidenec shows that the cost to the carrier for the additional insurance coverage required exceeds the charge made to the shipper, since shippers who avail themselves of additional protection receive it at less than cost, p. 182.

Rates, § 427.2 — Motor carriers — Limited liability rates.

11. Proposed limited liability motor carrier rates should not be authorized where evidence failed to show just what percentage of the rates represented the cost of insurance or the amount necessary to cover the carrier's losses, where no testimony was presented to show what losses the carriers had actually incurred, and where insurance companies produced no data showing the relationship of their losses to the premiums charged, p. 182.

[September 23, 1942.]

PROCEEDINGS *on Commission motion as to whether motor carriers should be authorized to establish freight rates dependent upon value of property transported as fixed by the shipper; authority to establish limited liability rates denied. For earlier decision see (1941) 39 PUR(NS) 257.*

APPEARANCES: Gay H. Brown, Counsel (by Raymond J. McVeigh, Assistant Counsel), for the Public Service Commission; David Brodsky, New York city, Attorney, for Interstate Household Goods Movers Tariff Bureau, Inc., and New York State Warehousemen's Association; J. Almyk Lieberman, New York city, Attorney, for Eastern New York Transport Association, Inc., and Furniture Deliveries Association, Inc.; Solomon Granett, New York city, Attorney, for State Parcel Corporation; James H. Noble, New York city, New York Manager, New York Motor Carrier

Conference; W. G. Clayton, Jr., Buffalo, General Manager, New York Motor Carrier Conference, Inc.; Arthur N. Field, New York city, Attorney, for Affiliated Ladies Dress Apparel Carriers Association; Martin Werner, New York city, Attorney, for Inter-City Carriers Corporation and Block Interstate Express Co.; Nathan E. Zelby, New York city, Attorney, for Independent Tariff Bureau and American Van Lines, Inc.; Louis Kletter, New York city, Secretary, State Parcel Corporation; H. C. Willson, New York city, Secretary, Official Classification Committee; B. J. McHugh, Albany, Assistant Manager, New York State Railroads, Motor Carrier Committee.

MALTBIE, Chairman: This proceeding was initiated by the Commission to determine whether common carriers of property by motor vehicle should be authorized to establish rates varying according to the predetermined value of the property transported as such values are fixed by the shippers.

After one hearing had been held, the Commission adopted a memorandum in order to clarify the situation if possible. That memorandum called attention to the fact that the Public Service Law did not permit common carriers to limit their liability for loss, damage, or injury to property transported unless expressly authorized by order of the Commission. It also announced that it was the opinion of the Commission:

"that variations in rates due to the varying liability which the carrier assumes in transporting property are generally in the public interest and that it is desirable where shippers are willing voluntarily to limit the liability of the carrier to lower amounts, the rates to be charged for such transportation should be less than where the shipper desires to fix a higher value for the property in case of loss, injury, or damage.

"We are not prepared to say that this principle should be extended to all commodities. The general rule of law stated above should be followed unless it is shown affirmatively that it is in the public interest in the case of specific articles or commodities that rates should vary with the limited liability value fixed by the shipper. Thus, in any application for the establishment of limited liability rates, the burden of proof will be upon the applicant and he should be prepared to show that the establishment of such rates in the case of specific commodities will be in the public interest."

. . . . . .

"The only justification suggested was that the rates submitted had been in operation elsewhere. We are not prepared to permit the establishment of limited liability rates in this new field merely upon the proof that they have been in use elsewhere. Before a departure is permitted from the general rule that a carrier may not limit its own liability, any common carrier by motor vehicle who desires to establish limited liability rates must be prepared to show that the rates he suggests are fair and reasonable and principally that the variations submitted represent variations in the actual cost of the service. No such proof has as yet been submitted and the Commission, therefore, is not prepared at this time to authorize any carrier to establish any schedule of limited liability

rates for any class of commodities." (39 PUR(NS) 257, 258, 259.)

The Commission decided to continue the proceeding in order to give any carrier an opportunity to prove that the specific limited liability rates which it proposed were just and reasonable.

Petitions were filed by the State Parcel Corporation, Furniture Deliverers Association, and the Interstate Movers Tariff Bureau. The latter requested authority to establish limited liability rates as agents. This petition was disposed of in the memorandum quoted above.

The State Parcel Corporation withdrew its petition as it had decided to seek judicial determination of the provision in the Public Service Law prohibiting motor carriers from transporting property under limited liability rates without the consent of the Commission.

Counsel for certain shippers proceeded to present considerable testimony relative to limited liability rates for furniture, home furnishings, antiques, home and office appliances, toys, children's vehicles, and boats. During the progress of the case, particular emphasis was placed on antiques, furniture, and home furnishings.

[1–5] The principal testimony in favor of varying rates depending upon predetermined values was given by Mr. William T. Bostwick, vice president of the Manhattan Storage and Warehouse Company, who testified that the transportation of household goods is a "different species of animal from the transportation of merchandise or other commodities" in that they require a different type of conveyance, handling by men who have special experience, special care in handling and are peculiarly susceptible to extravagant claims in case of loss or damage. He stated that it was exceedingly difficult for any carrier to determine at the time the shipment was received whether it was of unusual value or just an ordinary piece of furniture and that consequently extravagant claims were often made after a piece of furniture was destroyed. He contended that where the value was not easily ascertainable after the damage had occurred, the shipper should be required to fix the amount he was willing to receive in case of loss or damage before transportation began. He also claimed that these general remarks would apply to any shipment, such as the contents of trunks, suit cases, and furniture, where the articles could not be readily inspected and a value determined by the carrier.

Mr. Bostwick's testimony was to some extent supported by other witnesses and I am of the opinion that the proof is sufficient to show that for certain commodities variations in rates due to the varying liability of motor carriers of property are generally in the public interest and that it is reasonable to provide that where shippers are willing to limit the liability of the carrier to specific amounts reasonable rates should be established for such transportation and that they should be less in amount than where there is no limitation of liability. These commodities are furniture (new or used, reupholstered or refinished, crated or uncrated), home furnishings (new or used, crated or uncrated), and antiques (crated or uncrated). There is not sufficient evidence to show that any of the other commodities men-

tioned are of such a character as to warrant limited liability rates, except possibly trunks, suit cases and other packages where contents are not declared. It may be that such proof can be produced but I am merely passing upon the testimony that has been presented.

As repeatedly pointed out during the progress of this proceeding, it is not sufficient to establish the reasonableness of limited liability rates of *some* character. Rates must be specific, as stated in the prior memorandum in this case, and there should be proof that the rates proposed are just and reasonable. It will not do to establish the fact that certain rates have been charged in other jurisdictions, particularly where there has been no ruling by other authorities upon detailed facts duly presented that such rates are just and reasonable.

It has been pointed out that there are two ways in which material testimony as to specific rates could be presented. In the first place, carriers ought to be able to show what they have had to pay as a matter of actual experience for loss and damages by classes of property, length of haul, etc. Actual experience is a much better guide than a world of theory.

The experience of insurance companies in meeting losses under policies which have been issued should be a guide as to what premiums should be charged. It is said that allowance should be made for the expenses of the carriers in determining losses and conducting lawsuits.

We come now to consider to what extent the proof submitted in this proceeding indicates what are reasonable rates and charges.

[6–11] Mr. Louis Kletter, an officer of the State Parcel Corporation, testified that the purpose of seeking authority to establish limited liability rates was to limit their liability for each truckload to a sum not exceeding $20,000. Thus, when shipments were tendered that woud exceed in value 50 cents per pound, a figure obtained by averaging the value of an ordinary truckload, a charge could be assessed to cover the re-insurance cost. He asserted that the charge proposed for additional coverage "would about cover the additional cost of such re-insurance," but he did not know whether the insurance companies' rates are the same as the proposed charge. He alleged that the pending application is not for the purpose of seeking additional revenue but to have the additional charge cover only the cost of additional insurance. He admitted that it is almost impossible to tell what the charge for the additional insurance would be at the "outset," since there are "no experience records available within the state of New York." The basis submitted was the "present setup under the I.C.C." but he did not know whether the question of reasonableness of such charges had ever been brought up or decided.

Whatever may be the propriety or justification of the contentions of this witness, his testimony affords no foundation for a finding that the proposed rates are just and reasonable. The only fact in their favor is that they have been used.

Mr. William T. Bostwick, an officer of the Manhattan Storage and Warehouse Company, testified that it had been the custom before regulation by the state of New York to require ship-

pers to limit the liability of the carrier and that without such limitation rates must be of necessity be a great deal higher, and that the very nature of household goods makes it very difficult for a carrier to determine the value of a shipment. He asserted that he had handled several hundred claims a year, the majority of which were for small damages or loss, but that excessive claims are sometimes presented, and that there is no practical way of determining the reasonableness of claims for concealed damages or loss. He testified that the average sale price of household goods sold at warehouse auctions ran from 35 cents to 40 cents per cubic foot as against the proposed liability limit of $2 per cubic foot; that the average shipment of household goods occupies from 800 to 900 cubic feet and that the average value runs from $1,000 to $2,000, which, converted to a cubic foot basis would give a range of $1.50 to $2 per cubic foot. Where rates are based on weight rather than cubic footage, a conversion of limitation from per cubic foot to per pound on the basis of 6½ pounds to each cubic foot is reasonably accurate.

From the testimony of this witness there is no way to determine what the rates should be for unlimited liability and what the different rates should be when there are varying values fixed by the shipper.

Mr. Robert M. Ferguson, an insurance agent, broker, and underwriter, testified that he had in effect 200 policies issued to carriers located in New York state and had handled adjustment of claims; that the charges shown in the last three columns of Exhibits 2, 3, and 4 represented the cost of obtaining additional cargo insurance; and that the policies issued limited the liability of the insurance companies to their face value.

The insurance rates were said to be $20 per thousand dollars of insurance per annum within a radius of 50 miles and $30 per thousand dollars beyond such a radius. For unlimited liability of the carrier, he testified that these rates would be increased from 50 to 100 per cent depending upon the distance, but that the companies he represented had never issued such policies. Policies covering unlimited liability but not as to amount have been issued and the maximum amount of coverage issued by his company amounted to $10,000 per load. He expressed the opinion that insurance rates were based upon the limited liability rates shown in the carrier's tariffs and that his companies would not continue to issue policies for the same premiums if there were no limitation of liability.

This testimony was very vague and indefinite so far as the relation of cost of insurance to varying values is concerned. It furnishes no basis for determining what are reasonable rates or what differentials should be recognized for varying values.

Mr. B. Kirschenbaum, an officer of the Neptune Storage, Inc., testified that he was a director of the Interstate Household Goods Movers Tariff Bureau and chairman of the rate committee; that in filing their tariffs with the Public Service Commission they repeated the rules, charges, and provisions contained in their interstate tariffs; that at the time tariffs were filed there was outstanding as to interstate traffic a released rates order and that the rates filed with the Public Service Commission *were predicated*

on the assumption that there was limited liability. This assumption is, of course, unjustified. The law clearly provides that limited liability rates may not be "presumed"; they can only be established *after* permission has been obtained from the Commission.

The witness testified further that intrastate operators in a great many instances have to meet the competition of interstate operators between points in New York state which may be reached by both interstate and intrastate routes; that it would be possible to transport a shipment between certain points in New York state under limited liability rates by going through other states, thus making the shipment interstate in character, and that such rates would, of course, give the carrier greater protection.

The testimony of this witness again affords no foundation for a finding that the proposed rates are just and reasonable, whatever may be the need or propriety for such rates.

Mr. M. B. Young, broker of the firm of Johnson & Higgins, testified that he had obtained quotations with respect to certain cargo insurance coverage and that the quotations obtained were contained in a letter from White & Camby, Inc., agents for the Fidelity and Guarantee Corporation. The letter states that the present rate of 2½ per cent of the face amount of the policy is predicated on the assumption that the carrier's liability would not exceed $2 per cubic foot and that for liability of $5 per cubic foot, $10 per cubic foot and unlimited liability, rates of *at least* 3, 4, and 5 per cent, respectively, would be required.

The witness also expressed the opinion that a carrier must consider that a certain amount of his revenue would be devoted to the payment of claims, part of the freight rate presumably would be loaded with various cost factors, one of which would be the cost of settling claims arising from damages in the course of transportation, and that an insurance company could not fully substitute itself for a carrier whose liability is unlimited, because an insurance company must and does limit its liability to a stated amount and it would be impossible for a carrier to secure coverage for unlimited liability.

Considering all of the testimony relating to the rates that should be recognized for varying degrees of liability, it must be said that the record is very indefinite and unsatisfactory and often contradictory. For example, witness Ferguson stated that insurance policies for unlimited liability would be issued but admitted such policies had never been issued. Witness Young stated that it would be impossible to obtain such a policy. The reasonableness of the published and proposed scales has not been established even approximately.

No testimony was presented as to the actual cost of insurance. Attorney Brodsky stated at page 56 that the cost of insurance was 2 per cent of the coverage; but Exhibit 7 indicates that the premium rate ranged from 2½ per cent to 5 per cent of the coverage.

The carriers have not shown that the increase over the basic rate reflects the cost of any additional insurance required by a carrier to protect itself for the additional risk. Exhibits 2, 3, and 4 purport to show the transportation

rates of typical shipments for varying distances and the cost to the shipper for additional protection secured by increasing the carrier's liability. In every instance, the alleged cost to the carrier for the additional insurance coverage required exceeds the charge made to the shipper.

It appears that the additional or penalty charge proposed to cover the carrier's liability is arbitrary and does not reflect the actual cost. If so, it would seem either that the basic rates are higher than they should be or that the proposed scales would result in discrimination against the shipper using the basic scale, since shippers who avail themselves of the additional protection receive such protection at less than cost.

It is also to be noted that the penalty charge for shipments exceeding the proposed basic value is a fixed percentage of the base rate and progresses as the distance increases. However, it appears from the testimony that the additional insurance premiums do not progress on the same basis. The testimony, in fact, would indicate that the rate of premium is constant and based solely on the amount of coverage, but Exhibits 2, 3, and 4, previously mentioned, indicate a sliding scale apparently having some relationship to the mileage involved.

The carriers apparently do not know definitely, if at all, just what amount or percentage of their rates represents the cost of insurance or the amount necessary to cover their losses. No testimony has been presented to show what losses the carriers have actually incurred. Yet it would seem that the charges made should be based upon actual experience, actual costs. Insurance rates should be based on experience but the insurance companies produced no data to show the relationship of their losses to the premiums charged.

I am forced to the conclusion from the record that the carriers in this proceeding are not so much concerned with the establishment of rates on a proper basis which will reflect the increased risks as the value of the shipment increases as they are to limit their liability. This conclusion is based in part on the failure of the carriers to show that the proposed scales reflect the additional cost due to increased insurance premiums for assumed risks over the basic insurance coverage and on their obvious desire to have on file rates or tariff provisions which require the shippers to limit their liability regardless of the basis or bases of such rates.

I recommend that the proceeding be closed.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Frank Reilly

[Application Docket No. 60970.]

Interstate commerce, § 8 — What constitutes — Pick-up and delivery business — Interstate connections.

1. Operation of a local pick-up and delivery business for an interstate carrier is a movement in interstate commerce despite the fact that the service is performed solely within a 20-mile radius of a single city and solely within the confines of one state, p. 187.

Interstate commerce, § 38 — Jurisdiction of state Commission — Federal Motor Carriers Act.

2. Operations of motor carriers in interstate commerce were placed by the Federal Motor Carriers Act within the jurisdiction of the Interstate Commerce Commission and state regulation in the premises was automatically ousted, except as to those operations not embraced by the Federal Act, p. 188.

Interstate commerce, § 48 — Jurisdiction of state Commission — Certificates of convenience and necessity — Motor carriers.

3. The state Commission is powerless to issue a certificate of public convenience and necessity authorizing the performance of local pick-up and delivery service for an interstate motor carrier, p. 188.

[November 30, 1942.]

APPLICATION *for authority to operate pick-up and delivery service by motor vehicle; dismissed for lack of jurisdiction.*

By the COMMISSION: On December 11, 1941, Frank Reilly filed an application with the Commission for a certificate of public convenience as a common carrier for the public generally. However, at the hearing on his application, February 17, 1942, at Philadelphia, the applicant moved to amend his application. The amendment, which was granted, changed his application to one for approval of the right to perform local pick-up and delivery service for Barnwell Brothers, Inc., only between points in the city of Philadelphia and within an airline radius of 20 miles thereof.

Applicant has for the past four or five years operated a local pick-up and delivery business for Barnwell Brothers, Inc., an interstate carrier hauling between Burlington, North Carolina, and New York. Applicant testified that he applied to the Interstate Commerce Commission for a certificate under Docket No. MC-75644. It was in addition testified by the applicant that he applied in 1937 to the Public Utility Commission (Application Docket No. 49853, Folder No. 2), for the right to operate motor vehicles as a contract carrier for Barnwell Brothers, Inc. A hearing was had

thereon. After the hearing an order was made by the Commission on the said application, refusing the prayer of the petitioner to operate as a contract carrier, without prejudice to the right of the applicant to file an application as a common carrier. Thereafter, in due course, the applicant filed an application with the Commission for a rehearing and for a supersedeas. No action was ever taken by the Commission on such application for rehearing. However, the petition for supersedeas was refused. In the meantime, applicant continued his operations with Barnwell Brothers, Inc. No cease or desist order was ever issued against the applicant by the Commission. On the strength of the fact that he had applied to the Interstate Commerce Commission for certain rights which appeared to cover his operations for Barnwell Brothers, Inc., applicant continued to perform local pick-up and delivery service for Barnwell Brothers, Inc. However, several months ago applicant was advised by agents of the Interstate Commerce Commission that he should file an application with the Pennsylvania Public Utility Commission for a certificate; that the Interstate Commerce Commission on the theory that his operations, although part of a movement of interstate commerce, were intrastate in character and that the Interstate Commerce Commission would not issue any certificate in the premises. Hence, the applicant filed with the Pennsylvania Public Utility Commission an application for the approval of these operations for Barnwell Brothers, Inc., as amended at the hearing. However, without postponing the withdrawal of his application to the Interstate Commerce Commission applicant withdrew his application for Interstate Commerce Commission rights and, on January 17, 1942, the Interstate Commerce Commission made an order dismissing his Interstate Commerce application.

C. E. Chappell, manager of Barnwell Brothers, Inc., testified that Barnwell Brothers, Inc., is an interstate commerce carrier with headquarters in Burlington, North Carolina, and Philadelphia headquarters at Whitaker avenue and Luzerne street. Chappell testified that applicant had been performing local pick-up and delivery service for Barnwell Brothers, Inc., over a period of four years in the Philadelphia area; that applicant's name does not appear on any bill of lading or on any other shipping documents and that the freight charges were collected by Barnwell Brothers, Inc., who in turn paid applicant a stipulated consideration for the pick-up and delivery service he rendered Barnwell Brothers, Inc. Chappell testified that applicant's service was part of a stream of interstate commerce.

[1] The record in this case clearly discloses that the operations of applicant are a movement in interstate commerce. Applicant performs a pick-up and delivery service for an interstate carrier and thus is just as much a part of the interstate movement as the interstate carrier itself. This is so despite the fact that all the pick-up and delivery service of applicant is to be performed solely within a 20-mile radius of Philadelphia and solely within the confines of the state of Pennsylvania.

See The Steamer Daniel Ball v. United States (1871) 10 Wall. 577,

19 L ed 999; Meyers v. Railroad Commission (1933) 218 Cal 316, 1 PUR (NS) 215, 23 P(2d) 26; Illinois C. R. Co. v. De Fuentes, 236 US 157, 59 L ed 517, PUR1915A 840, 35 S Ct 275; Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission (1896) 162 US 184, 40 L ed 935, 16 S Ct 700; United States v. Erie R. Co. (1929) 280 US 98, 74 L ed 187, 50 S Ct 51; Buckingham Transp. Co. v. Black Hills Transp. Co. (1938) 66 SD 230, 281 NW 94; Oregon-Washington R. & Nav. Co. v. Strauss & Co. (1934) 73 F(2d) 912 (cert. denied [1935] 294 US 723, 79 L ed 1255, 55 S Ct 551).

[2, 3] Having decided that the operations proposed by applicant are within the orbit of interstate commerce, we come to the question of jurisdiction. While the power of this Commission over interstate commerce carriers prior to the passage by Congress in 1935 of the Motor Carriers Act (49 USCA 301-327, inc.) may have been questionable, it is certainly beyond question that, by the above act, operations of motor carriers in interstate commerce were placed within the jurisdiction of the Interstate Commerce Commission and state regulations in the premises were automatically ousted, except as to those operations not embraced by the Federal Motor Carriers Act. In the instant case the basic problem is the power of the Pennsylvania Public Utility Commission to issue a certificate of public convenience authorizing the operations requested by applicant in his application.

The Federal Motor Carriers Act, § 206(a) (49 USCA 306a), makes specific provision that application by motor carriers for the right to engage in interstate commerce shall be made to the Interstate Commerce Commission. It would appear, therefore, that by operation of law all state authority to issue such certificate was expunged. However, the second premise of that section has created doubt as to whether or not a state Commission may issue a certificate of public convenience for interstate rights conducted solely within a single state. Section 206(a) of the Federal Motor Carriers Act provides as follows:

"Except as otherwise provided in this section and in § 310a, no common carrier by motor vehicle subject to the provisions of this chapter shall engage in any interstate or foreign operations on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: . . . And provided further, that this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any state to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such state if there be a board in such state having authority to grant or approve such certificate and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this chapter."

The confusion thus created has been settled by a long list of Interstate

Commerce Commission and court decisions which held that the term "such certificate" in the second proviso of § 206(a) means a certificate authorizing intrastate commerce and it must be issued as proof of necessity; that a state Commission is totally impotent to issue a certificate of public convenience for interstate commerce within its confines, based on reasons of public necessity; and finally, that the only reason for proviso, *supra,* was to relieve a carrier who had already proven the existence of public necessity before a state Commission to acquire his intrastate rights, from duplicating those proceedings before the Interstate Commerce Commission in order to transport interstate shipments over the certificated route approved by the state Commission: I. C. C. Greyhound No. MC-F-234 I FCC; Re Chicago & N. W. R. Co. (1938) 10 MCC 111; Re United States Truck Co. (1938) No. MC-59336, Sub 1, I FCC 319; Re Baggett Transp. Co. (1941) MC-F-1139, 2 FCC 248, 304; Lebanon Transp. Co. (1941) No. MC-28961, Sub 2, 2 FCC 313.

Applicant in 1937 filed an application with the Pennsylvania Public Utility Commission for a contract carrier's certificate but was denied the same without prejudice to his right to file an application for a common carrier's certificate. Applicant then petitioned for a reargument but no action has ever taken place on said petition. Thus applicant was never granted any rights by this Commission and his instant application, if granted, will be the first certificate he has ever held under this Commission. The cases cited under § 206(a) of the Federal Motor Carriers Act are specific in saying that an interstate carrier carrying wholly within a state is exempt only if there is a board or commission within such state having authority to grant or approve such certificate, and if such carrier has obtained such certificate from such board. Thus applicant has failed to meet the requirements of this exempting section of the act and must necessarily make application to the Interstate Commerce Commission for a certificate to conduct the type of transportation outlined in his application.

Applicant relies on the Ray North Case as an example of wherein this Commission issued a certificate to an interstate carrier. A review of the facts of that case reveals that Ray North came within the exemptory provisions of § 206(a) of the Federal Motor Carriers Act, inasmuch as he was granted a certificate by this Commission for intrastate carrying in 1933. Thus it would have been repetition for him to apply to the Interstate Commerce Commission for the same rights although his type of carriage was now interstate in nature.

Thus upon full consideration of all matters involved, we are of the opinion that the operations proposed by applicant are interstate in nature and that since he does not come within the exemptory provisions of the Federal Motor Carriers Act, this Commission is powerless to issue a certificate of public convenience to applicant for interstate transportation rights; *therefore,*

Now, to wit, November 30, 1942, It is *ordered:* That the application of Frank Reilly for approval of the beginning of the exercise of the right and

privilege of operating motor vehicles as a common carrier for the transportation of property between points in the city of Philadelphia, Philadelphia county, and within a radius of 20 miles of Philadelphia city hall, as amended, be and is hereby dismissed for want of jurisdiction.

TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

Re Johnson City Transit Company, Incorporated

[Docket No. MC-1446.]

Rates, § 319.1 — Transit company — Cash and token fare increase.

A transit company was authorized to increase cash fares from the prevailing 6 cents to 10 cents and to increase token fares from the prevailing price of five tokens for 25 cents to two tokens for 15 cents, each token to be good for one 10-cent fare throughout the company's operation, where a municipal ordinance approved the increase and no protests were offered.

Rates, § 319.1 — Transit company — Cash and token fare increases — Temporary order.

Discussion of the propriety of authorizing a permanent increase in transit company cash and token fares, instead of authorizing a temporary increase, to relieve financial distress of the company, p. 191.

Rates, § 181.1 — Increases during war.

Discussion of the policy of curbing price inflation during war time, in connection with the matter of authorizing a temporary or permanent increase in transit company fares to relieve financial distress of the company, p. 192.

(JOUROLMON, Commissioner, concurs specially in separate opinion.)

[December 8, 1942.]

PETITION *seeking authority to increase fares; granted.*

By the COMMISSION: This matter came on to be heard by the Commission on the 24th day of November, 1942, upon the petition of Johnson City Transit Company, Inc., filed on the 16th day of October, 1942, seeking authority to increase its cash fares from the prevailing 6 cents to 10 cents and for an increase of token fares from the prevailing price of five tokens for 25 cents to 2 tokens for 15 cents, each token to be good for one 10-cent fare throughout the petitioner's operation.

There was filed as Exhibit A to said petition a certified copy of Ordinance No. 992 of the city of Johnson City, Tennessee, approving the increase sought. Reference is hereby made to said ordinance for the specific provisions thereof. No protests were offered to the petition.

Upon consideration of the petition and the evidence offered in support of same, it appears to the Commission that proper notice or publication of the proposed increased rates has been made in accordance with the rules and regulations of the Commission.

It further appears that the allegations set out in the petition are true and that said petitioner is justly entitled to the relief sought.

It is therefore *ordered* by the Commission as follows:

1. Ordinance No. 992 of the city of Johnson City, Tennessee, filed as Exhibit A to the petition, is hereby approved.

2. Petitioner, Johnson City Transit Company, Inc., is hereby authorized to increase its cash fares from the prevailing 6 cents to 10 cents and to increase the price of tokens offered for sale from the prevailing price of five tokens for 25 cents to two tokens for 15 cents, each token to be good for one 10-cent fare throughout the company's operation, said increased fares to become effective on the 1st day of December, 1942.

3. This matter will remain open for such further and future action as may appear necessary from time to time.

JOUROLMON, JR., concurring: I concur only in the short-term result of the order of the Commission. The order permits a permanent increase in fares from 6 cents cash and five tokens for 25 cents to 10 cents cash and two tokens for 15 cents for the purpose of relieving the present financial distress of the petitioner. I do not think that a permanent order to this effect should have been entered, and am decidedly of the opinion that a temporary order only should have been set down.

It developed during the hearing that, because of insufficient accounting help or for other reasons, the petitioner has not been keeping operating and statistical records of revenue passengers, transfer passengers, vehicle miles operated, and other operating data that would enable either the petitioner or the Commission to make analyses as to the economy of operations of the petitioner. Also very little evidence was introduced at the hearing as to urban development and transportation characteristics in the city being served. Under these circumstances I feel that the Commission is not justified at the present time in setting down an order permanently increasing fares for the riding public in Johnson City.

Under normal economic conditions it would seem incontrovertible that the effect of an increase in the fare most widely used by transportation riders from a 5-cent token to a 7½-cent token would be to decrease considerably the number of riders. Moreover, this fare increase, amounting to 50 per cent, is so steep that it is entirely plausible that the decrease in riders would reduce rather than increase the gross revenues of the petitioner. In other words, it seems to me highly debatable whether the fare increase asked by the petitioner and granted by the

Commission is the realistic remedy to apply in order to relieve the financial distress of the petitioner. Normally it might have the opposite effect than being good for the company.

On the other hand, the petitioner is going immediately into a period of national gasoline rationing which of itself will tend to decrease use of private automobiles and increase riding on city transportation systems. This shift of riding habit might be sufficient to relieve the present financial distress of the company if it were operating under its previously prevailing 5-cent token fare. However, because of the fact that the petitioner has not kept operating and statistical records in the past, it will be practically impossible in the immediate future to appraise the countervailing effects of the fare increase, which will tend to decrease riding, and national gasoline rationing, which will tend to increase riding.

The evidence adduced at the hearing indicates that, because of its financial condition, the petitioner at the present time is having to pay excessive interest charges for borrowed working capital and other funds. But it is doubtful whether a permanent order would be any more effective than a temporary order in relieving this condition in the immediate future. It is not likely that the banks from which the petitioner has borrowed funds will reduce interest charges or approve any long-run plan for more stable and less costly financing until it is determinable whether the fare increase granted will have a tendency to increase or decrease the petitioner's gross revenues and what the effects of national gasoline rationing will be upon the petitioner's gross revenues. Accordingly, it would seem that even from the viewpoint of capital costs a temporary rate order should be a prelude to any permanent rate order of any kind.

Finally, it seems to me that the granting of a permanent rate increase at the present time is contrary to sound principles of wartime rate making. It is the established policy of our national government, especially as made effective through the machinery organized under the Office of Price Administration, to curb price inflation including inflation in utility rates, throughout the period of the war except in cases where increases are necessary or unavoidable. In accordance with this national policy, it is the duty of Public Service Commissions throughout the country not to grant increases in utility rates during the war except in cases of dire need and where such increases are essential to keep companies in business. Such a national policy makes it incumbent upon Public Service Commissions to resist utility rate increases where not absolutely necessary, and to limit such rate increases to longer or shorter wartime periods where necessary. Thus precedents have already been established throughout the country in wartime rate cases in which at the most the increases granted have been "for the duration of the war and six months thereafter."

For the reasons set out above, I think that the relief granted in this case should have been through a temporary rate prescription rather than through a permanent rate order.

Autocar Half-Tracks

TEAM FIRE-POWER WITH HORSE-POWER

Wicked in its war-paint and bristling with cannon, your Autocar today is a big, burly, lunging brute . . . a *mobile fort* to carry the battle to the enemy, to shorten the road to peace. Yet, for all its fierce power, it is amazingly nimble, responsible to the controls. It is still an Autocar!

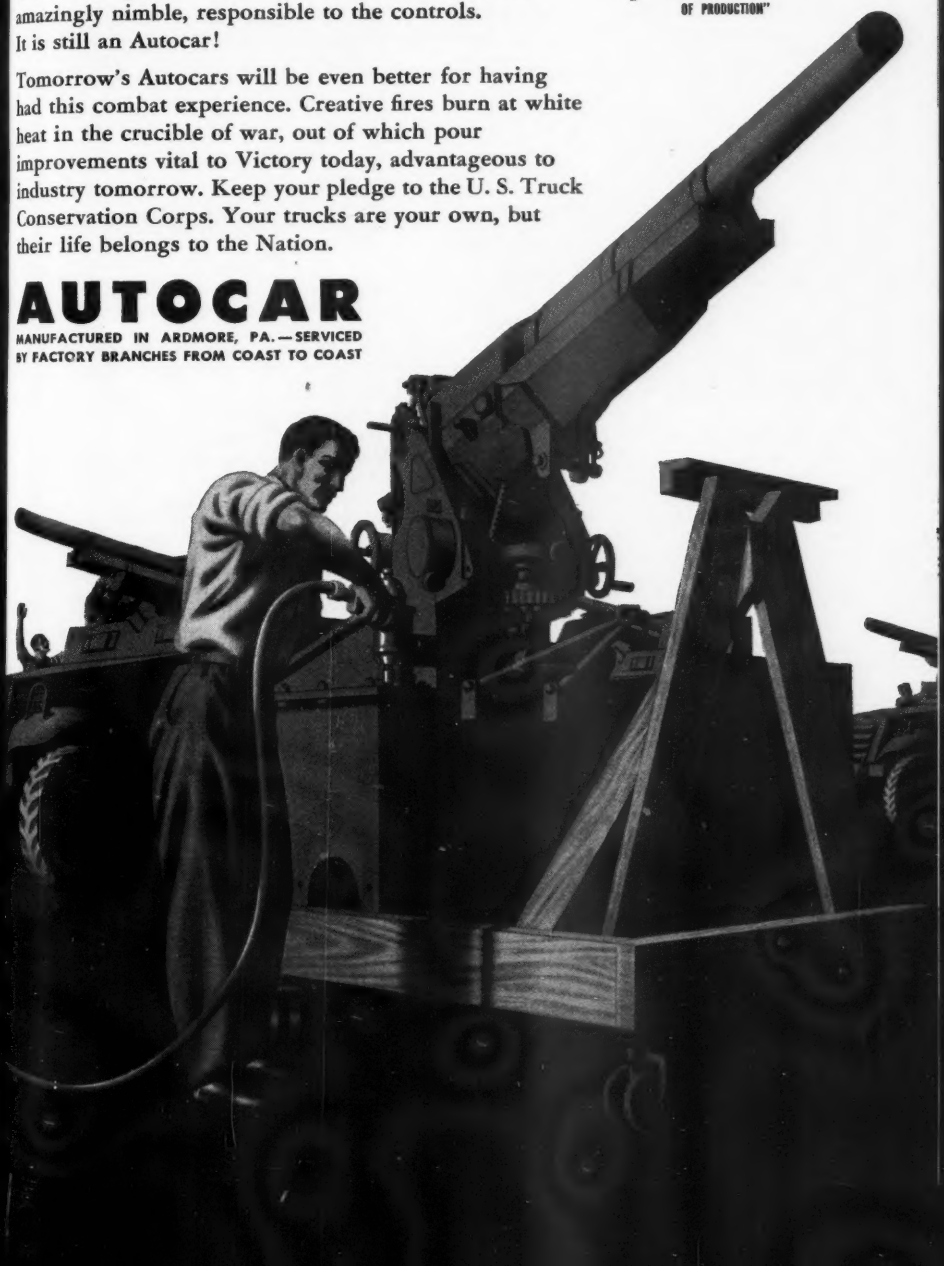
ARMY E NAVY

AWARDED AUGUST 1, 1942... "FOR EXCELLENCE OF PRODUCTION"

Tomorrow's Autocars will be even better for having had this combat experience. Creative fires burn at white heat in the crucible of war, out of which pour improvements vital to Victory today, advantageous to industry tomorrow. Keep your pledge to the U. S. Truck Conservation Corps. Your trucks are your own, but their life belongs to the Nation.

AUTOCAR

MANUFACTURED IN ARDMORE, PA.—SERVICED BY FACTORY BRANCHES FROM COAST TO COAST



Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Forced-Cooled Transformers Save Copper and Steel

Because of their greatly increased rate of heat dissipation, forced-cooled power transformers can be constructed with radical reduction in the amounts of steel and copper required, it was pointed out recently by L. R. Brown, manager of the General Electric Company's transformer division. Yet these savings are effected without sacrificing reliability.

By employing in large transformers the basic forced-cooling principles applied on transformers for electric locomotives and mobile substations, savings of as much as 30 per cent in copper and steel can be made as compared with self-cooled transformers of the same kva and voltage ratings.

For example, in three 20,000-kva, 138,000-volt, single-phase, 3-winding, forced-cooled transformers, 18,000 pounds of copper and 57,000 pounds of steel were saved. Furthermore, the purchaser of the equipment was thereby saved nearly $24,000.

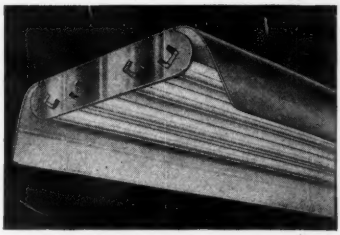
Fire Blanket

One of the most widely-accepted first-aid practices for saving the life of a person whose clothing has become ignited is to wrap the person in a blanket and thus extinguish the flame by smothering it. To overcome the several hazards involved in this practice, the C. Walker Jones Company, of East Germantown, Philadelphia, Pa., has developed the Jomac Fire Blanket—a specially-knit, flexible blanket that is 100 per cent flame-proof, regardless of the intensity of the fire.

These blankets are available in attractive, flame-proof containers that may be hung on the wall beside fire-extinguishers, in first-aid stations, or placed with equipment provided for air-raid wardens, thus making available effective, on-the-spot protection wherever there is the danger of a workman's clothes being ignited. It is pointed out that of all fire-burns, none results in casualties so often as those involving burning clothing.

Fluorescent Industrial Luminaire

A large "Four-Liter" non-metallic reflector unit for Fluorescent lighting which



Guth Super Maze-Lite

utilizes the new critical-material-saving "Forlamp" ballast is offered by Edwin F. Guth Co., St. Louis, Mo.

This new type Maze-Lite is adapted for high-intensity lighting in inspection areas or for high-bays.

New Gulf Dieselube For Heavy-Duty Vehicles

Gulf Oil Corporation has just announced a new brand of lubricating oils which it calls Gulf Dieselube H.D. (Heavy Duty). These oils are made to meet U. S. Army specifications for internal combustion engines for ground equipment such as trucks, tanks and jeeps. They also have been approved by the leading manufacturers of Diesel engines for tractors and trucks.

They are also recommended for gasoline engines in commercial equipment where service is extremely heavy to overcome ring sticking, lacquer formation, and bearing corrosion.

"Umbrella" Shields War Plants From Lightning Damage

A wire "umbrella" to shield vital explosives plants and oil storage centers from lightning has been developed by Dr. Gilbert D. McCann, Westinghouse Electric & Mfg. Company engineer. It is already being used by some war industries and one huge ordnance plant. Using a minimum of strategic materials, the shield easily deflects lightning driving earthward at more than 11 million miles a minute.

The shield consists simply of a steel wire strung above the building to be protected and anchored on tall wood poles at each end. The wire is then connected to steel rods buried in the ground.

The importance of such protective devices

5 VITAL SECONDS

. . . when Grinnell Mulsifyre may save months of crippled service!

It's no easy matter, these days, to get replacements or repairs of any oil transformer, generator or circuit breaker that "goes up in smoke". Delays created by equipment makers' defense business may mean grief to you.

Handicaps like this to your production facilities can now be prevented by equipping all oil-bearing devices with Grinnell Mulsifyre . . . an original development by the pioneers of automatic sprinkler fire protection. It "kills" oil fires with water!

The instant a Mulsifyre System is turned on, either manually or automatically, a driving spray of water strikes the oil . . . churns the surface into a non-flammable emulsion . . . snuffs out fire in a matter of seconds, to block any major damage. Simple . . . fast . . . positive! Within a few hours, the emulsion breaks down, separating the oil, unimpaired, from the water.

Write for detailed folder on this remarkable fire protection system. Grinnell Co., Inc., Executive Offices, Providence, R. I. Branch offices in principal cities of the United States and Canada.

GRINNELL

Automatic Sprinkler Fire Protection

Equipment Notes (Cont'd)

is indicated by studies of lightning strokes on power lines which show that each square mile of sky hurls about 10 thunderbolts at the ground each year. Modern ordnance plants have several hundred buildings spread over a large area so each plant will be a target for lightning several times a year. Just one of those strokes could cause a disastrous explosion or fire if proper protective devices were lacking.

Improved Floodlight Has Bowed-in Reflector

An outstanding feature of the General Electric Company's new L-43 floodlight is a bowed-in silvered-glass reflector which creates the

New 1000-watt Floodlight

equivalent of a larger floodlight in its collection and utilization of light. The shape of the reflector makes it possible for light to be reflected back to the parabolic surface, where it is redirected outward as part of the main beam.

The reflector, which serves also as the floodlight casing, is made shatter-resisting by backing it with an extra coating of electrolytically deposited silver. A standard 1000-watt general service lamp is used with the unit.

The G-E L-43 floodlight is particularly useful for protective lighting, railroad lighting, general area lighting, and lighting for construction work. This floodlight can be equipped with a metal visor for use in dimout areas where outdoor night work must continue.

Gypsum Products

A group of new gypsum products developed to meet the immediate demands of wartime construction has just been put on the market by The Celotex Corporation, Chicago. The new products replace more critical materials, such as steel and lumber, in both temporary and permanent structures, according to Henry W. Collins, vice-president. WPB is advocating the use of such gypsum products in place of less available materials.

The products include a new gypsum exterior siding covered either with smooth or mineral surfaced roofing; laminated gypsum wallboard panels suitable for demountable or permanent single wall interior partitions; laminated gypsum roof deck slabs; and poured gypsum roof decks for use with wood frame industrial construction.

New Insulating Material Saves Rubber and Tin

The National Electric Products Corp., Pittsburgh, Pa., has announced a new type of electric wire for wartime building, having a new material together with a specially treated paper for insulation. This new covering replaces such critical materials as rubber and tin heretofore used for such insulating purposes.

All-Plastic Respirator Offered By Mine Safety Appliance Co.

The widely used aluminum model Dustfoe Respirator, manufactured by Mine Safety Appliances Company, Pittsburgh, Pa., is now available in an all-plastic model, approved by the U. S. Bureau of Mines. Known as the Clear-Vue Model Dustfoe, it is an efficient, compact, lightweight respirator made of transparent plastic—durable, odorless, non-corrosive, and a non-conductor of electricity and heat, states the company.

The Clear-Vue's transparent construction makes possible the inspection of the filter for proper insertion and seal without removal from the respirator. A plastic catch on the filter case locks positively in place only when the filters are in the correct position. The unit is comfortable to wear and gives approved protection against all pneumoconiosis-producing, nuisance, or toxic dusts. The self-adjusting facepiece has a new form-molded sponge rubber facecushion. An Army-type exhalation valve provides immediate drainage of any condensation from the facepiece.

Flexible Wood Link Mat

The development, of a flexible wood link matting, has been announced by American Mat Corporation, Toledo, Ohio. This mat is substantially constructed of wood links. It is light in weight and can be rolled or folded up for easy handling and cleaning. Lying flat, it follows the contour of the floor.

Flexible wood link matting makes for safety underfoot, is comfortable to stand on, and affords good drainage, according to the manufacturer. The ends are beveled to reduce the danger of tripping. It comes in natural wood color and is inexpensively priced. The mat is

Facts You Can Use to Cut Distribution Costs

TRANSITE DUCTS RESIST CORROSION!

MAINTENANCE costs *stay* low when Transite Ducts are used. Entirely inorganic and non-metallic, these asbestos-cement ducts are highly resistant to corrosion. They can't rust or rot... won't burn.

Yet low maintenance is only part of the savings made by using Transite Ducts. Supplied in long, light lengths, these durable cableways are installed quickly and easily; thus, installation costs are kept low. For details, write for brochure DS-410. Johns-Manville, 22 E. 40th St., N. Y.

T CORROSION-RESISTANT, rustproof rotproof, Johns-Manville Transite provide maximum assurance of long, nt life and low maintenance when ed on exposed locations. On many installations, such as the one shown Transite Conduit outperforms more ive materials commonly used for urpose.

UNUSUALLY WEATHER-RESISTANT, these asbestos-cement ducts may be safely stored outdoors. Their sustained strength permits piling to convenient heights without distorting or crushing the duct.

UNIFORMLY STRONG AND DURABLE, J-M Transite Conduit needs no protective casing underground. And its tough asbestos-cement composition offers superior protection against corrosive soils.

FOR EFFICIENT, LOW-COST SERVICE, SPECIFY...

JM Johns-Manville

TRANSITE DUCTS

TRANSITE CONDUIT... For use underground without a concrete envelope and for exposed locations.

TRANSITE KORDUCT... For installation in concrete. Thinner walled, lower priced, but otherwise identical with Transite Conduit.

Equipment Notes (Cont'd)

1 inch thick and comes in stock sizes: 18 x 32 in., 24 x 38 in., and 30 x 44 in., but can also be obtained in special sizes of any length and up to 36 in. in width.

To help in conserving present matting, through proper care American Mat has set up a special service and advisory department for the duration. Detailed literature is being made available for the asking.

Catalogs and Bulletins

"Littelfuse Products"

Littelfuse Products, a 16-page catalog issued by Littelfuse, Inc., Chicago, illustrates and describes a wide variety of fuses, fuse mounting, neon products, and instrument protecting equipment.

Centrifugal Pump Maintenance

"Handbook for Wartime Care of Centrifugal Pumps," (part of a series which already includes books on the wartime care of motors and V-belts), has been issued by Allis-Chalmers Mfg. Co., Milwaukee, Wis.

Like motors and drives, pumps are being pushed far beyond normal capacities, and many pumps that worked 1800 hours in a peacetime year are now working 8700 hours a year, according to Allis-Chalmers.

Abundantly illustrated, the new maintenance guide makes specific recommendations for putting pump care on a wartime basis. Step by step a centrifugal pump is actually built, and as each part is added, the way it's built and functions are seen to determine the way it should be cared for.

Stephens-Adamson Bulletin

An illustrated bulletin issued by Stephens-Adamson Mfg. Co., Aurora, Ill., describes Redler conveyor-elevators and other conveying equipment, also car pullers, winches, speed reducers and crushers, manufactured by this company.

Motor Selector Device

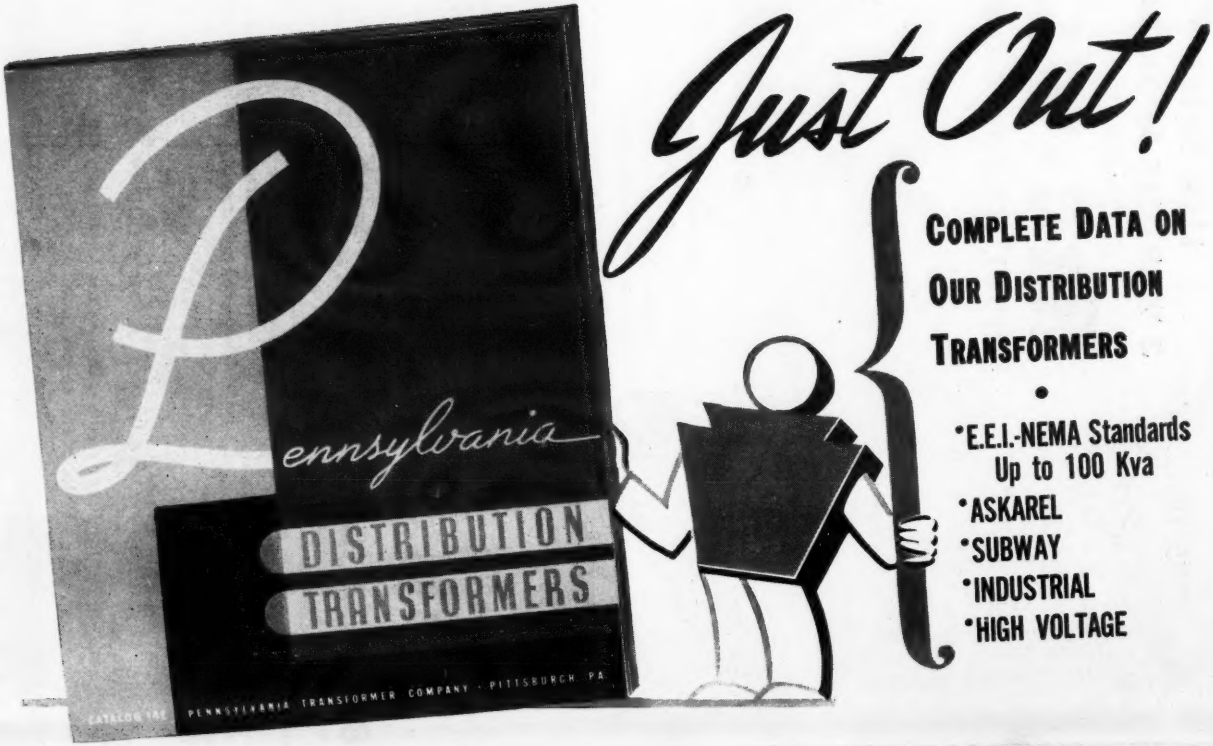
To help motor users fill their wartime motor needs with the least possible delay, as well as conform to WPB recommendations, Allis-Chalmers offers a new "Motor Finder" for quickly selecting the various types of squirrel-cage motors.

With the new "Motor Finder" slide-rule, the motor user is able to match the conditions under which the motor must operate at the proposed installation with the required motor characteristics and instantly learn the right motor type and its features.

Practical Helps on Lathe Operation

A bulletin has been issued by the South Bend Lathe Works describing motion picture films, instruction books, wall charts and blue prints on lathe operation. This circular also offers sample copies of several publications

(*Continued on page* 42)



Catalogs & Bulletins (Cont'd)

without cost to those in charge of apprentice training and instruction in shop work.

A copy of Circular No. 21-C describing the books and films on lathe operation will be mailed on request by the South Bend Lathe Works, South Bend, Indiana.

War Revision of Meter Code

Testing of electricity meters will be done less frequently during the period of the war, according to a revision to the Code for Electricity Meters, just approved by the American Standards Association.

The revision, approved as American War Standard, C12WS-1942, is based on the findings of the ASA Sectional Committee on the Code for Electricity Meters (C12), functioning as a War Standards Committee. The committee decided that the interval between tests of a-c meters 12 kva and less could be extended to eight years without much danger that an injustice would be done either to the power companies or their customers.

Care of Centrifugal Pumps

A 28-page Handbook for Wartime Care of Centrifugal Pumps has been published by Allis-Chalmers Mfg. Co., Milwaukee, Wis.

The book applies to all makes of centrifugals and is presented in a most interesting manner. The text matter is written in simple A.B.C. style and the cartoon characters are used effectively in the freehand drawings which illustrate the text.

Chevrolet Scrap Program

More than 120 million pounds of scrap metals—sufficient to build Uncle Sam 20 more submarines, six destroyers and a cruiser—have been collected by the 8,000 Chevrolet dealers in America as a portion of their contribution to the war program.

An activity sponsored by the Victory Service League, patriotic alliance of American motorists supported by Chevrolet dealers, the scrap drive has been a continuing operation, under the general supervision of William E. Holler, Chevrolet general sales manager.

Pennsylvania Distribution Transformer Catalog

A 32-page catalog (No. 142) on Distribution Transformers has been issued by the Pennsylvania Transformer Company, Pittsburgh, Pa. The new publication is attractively bound and illustrated. Its contents are divided into three sections, the first describes distribution transformers conforming to E.E.I.-NEMA standards—1½ Kva to 150 Kva, 60 cycles, single phase, O.I.S.C. Section two deals with special distribution transformers, single and three phase. Pennsylvania transformers of 200 Kva and above are covered in the third section.

Detailed data on construction are given together with information on mounting, shipping and standard accessories available, including oil drain valves, gauges, thermostats, etc.

Outline drawings are included and reference to them by figure and page number in the specifications and price tabulations facilitates the use of the catalog, copies of which are available from the manufacturer.

Manufacturers' Notes

Johns-Manville President Addresses Economic Group

Defining the post-war period in America as "the time after 1948," Lewis H. Brown, president of Johns-Manville Corporation, recently told the Washington members of the American Economic Association that he looked forward "to the post-war future in the hope we can profit by the mistakes of the twenties, the mistakes of the thirties and the lessons of war in organizing a better way of life for all of us here in America."

A chief lesson to be learned he said is that "coöperation, not conflict, must guide government, business, labor and agriculture in their service to our people."

Westinghouse Appointments

Bernard H. Sullivan, manager of sales for the Westinghouse Lamp Division, Bloomfield, N. J., has been assigned responsibility for all commercial activities involving lamps and special products, and Ralph C. Stuart has been appointed manager of manufacturing and engineering for the Division. The announcement by George H. Bucher, president of the Westinghouse Electric & Mfg. Company, follows the recent death of David S. Youngholm, vice president in charge of the Lamp Division.

Short Succeeds Herrington As SAE President

Mac Short, vice president in charge of engineering of The Vega Aircraft Corporation of Burbank, California, has been elected president of the Society of Automotive Engineers.

The retiring president, A. W. Herrington, chairman of the board of directors of The Marmon-Herrington Company, Indianapolis, Ind., will continue his active participation in SAE affairs as a member of the national council.

Osborne Mfg. Co. Appointment

Henry T. Riddick, with The Osborn Manufacturing Company of Cleveland for the last 32 years, has been named sales service manager of the company's brush division.

He will continue to serve as credit manager, which office he has held for many years. In his new duties he replaces L. J. Bechhold, who recently resigned.

Another "E" for G-E

The Army-Navy "E" award was presented to the General Electric Company's Ontario (California) Works, which formerly made electric appliances. The "E" flag was unfurled beside the service banner, and the U. S. Treasury "T" flag, awarded for bond purchases. Three thousand persons, including factory workers, townspeople, officials of the armed services, and other dignitaries, attended.

A. C. Sanger, of General Electric Company's

STEPPING STONES TO VICTORY

EACH landing we make, every enemy position we capture, is a stepping stone toward victory. But remember, the men who tread this path need backing from all of us at home.

The least that can be done to back them up is to help conserve essential material by making our storage batteries last as long as possible—regardless of the service in which they are used. The "stepping stones" at the right will help you get from your Exides all the long life that we build into them.

THE ELECTRIC STORAGE BATTERY CO.
The World's Largest Manufacturers of Storage Batteries for Every Purpose
PHILADELPHIA
Exide Batteries of Canada, Limited, Toronto

FIRST STEPPING STONE: Add approved wate at regular intervals.

SECOND STEPPING STONE: Keep batteries clean and dry. Wash off tops with a solution of one pound of bicarbonate of soda to one gallon of water; rinse and dry thoroughly.

THIRD STEPPING STONE: Keep batteries fully charged—but avoid excessive over-charge.

FOURTH STEPPING STONE: Keep written records of water additions, voltage, and gravity readings for comparisons as batteries grow older.

Write for further information, stating battery application in which you are interested. We will be glad to help you with any special battery maintenance problem confronting you.

Exide
BATTERIES

Manufacturers' Notes (Cont'd)

Appliance & Merchandise Department headquarters, Bridgeport, Conn., accepted a token bestowal of "E" pins. Mr. Sanger manager of G-E's heating device, clock, fan and sunlamp sections, is supervising war production of these now-converted appliance sections.

William C. Carter Heads Link-Belt Company

William C. Carter, for 14 years vice president and for the past year executive vice president of Link-Belt Co., has been elected president of the company to succeed Alfred Kauffmann, who has resigned because of ill health. Mr. Kauffmann remains a member of the board of directors.

Mr. Carter joined the Link-Belt Pershing Road Chicago plant in 1902 as a draftsman. He has been in complete charge of company affairs since Mr. Kauffmann's illness. Mr. Kauffmann, who has been with the company for 41 years, rose from draftsman in 1901 to president in 1924.

G-E Campaign Clears Wires for War

During the first month of a campaign to cut down nonessential telephone calls at General Electric's Schenectady Works and "Clear the Wires for War," a reduction of 12.7 per cent in the number of calls and a 12.5 reduction in the average length of time per call has been realized. This represents a saving of more than 22,000 minutes of long-distance time during the month. The Lamp Department has so far achieved a 33 per cent reduction in long-distance calls.

Each G-E telephone has been tagged with an appeal to "Clear the Wires for War." Posters, pay envelope leaflets, and various other internal media remind employees to make only essential calls, keep them short, and make use of telegraph and teletype facilities wherever practicable.

R I & E Executive Dies

C. G. Koppitz, 64, vice president and consulting engineer of the Railway and Industrial Engineering Co., Greensburg, Pa., died January 6th following a short illness.

Mr. Koppitz was recognized as a leading engineer on high tension switching and held numerous patents in the power generation and transmission field.

Mr. Koppitz, a native of California, where he operated a hydro-generator plant, became associated with R. & I. E. in 1914 as chief engineer and served in that capacity until recent years when he became an official of the company.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

PROFESSIONAL DIRECTORY (*continued*)

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Design and Construction of Industrials
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Public Utility Valuations, Reports and Original Cost Studies.
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(*Professional Directory Concluded on Next Page*)

PROFESSIONAL DIRECTORY

(concluded)

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[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

*Fortnightly advertisers not in this issue.

MERCOID

The Only 100% Mercury Switch Equipped Controls

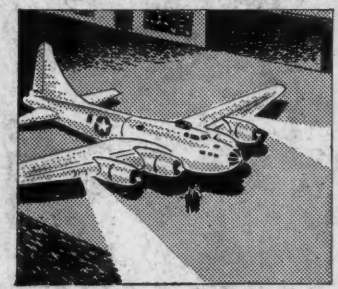
Mercoid line of automatic controls are the results
ver two decades of wide experience in the engi-
ing and manufacture of automatic controls ★
izing the responsible duties imposed in the func-
ng of automatic controls, the Mercoid organiza-
deems it imperative that nothing be spared in
erial quality, workmanship, or time in perfecting
y detail of design and construction that will add
better and more reliable operating instrument ★
s, from the very beginning, Mercoid Automatic
trols have employed the now famous hermetically
ed Mercoid Switches. These mercury contact
ches are designed to give an operating result
obtainable in the open contact types ★ The
king" and "breaking" of an electrical circuit in
ntrol should be as near trouble-free as possible.
coid Mercury Switches are the best answer to
problem. Long years of service under various
ditions prove this ★ The mercury switches manufactured by The Mercoid Corporation are all of special design, made under the most exacting conditions to meet the rigid specifications required. They are known the world over as "Mercoid Switches." The trade mark "Mercoid" is registered in the United States Patent Office ★ The advantages of Mercoid Switches are many. They cannot be affected by dust, dirt or corrosion; nor are they subject to open arcing or pitting and sticking of the contacts. Many of them are used on applications involving millions of operations where they give a highly satisfactory performance. The exclusive use of these switches is one of the distinguishing features of Mercoid Controls ★ Apart from the importance of the Mercoid Hermetically Sealed Mercury Switch, there are a number of other outstanding characteristics in the design, construction, and operation of Mercoid Controls which are adequately covered in the new Mercoid catalog Number 600—a copy will be sent upon request.

E MERCOID CORPORATION ★ 4219 BELMONT AVENUE ★ CHICAGO, ILLINOIS

IT PAYS TO GET THE BEST

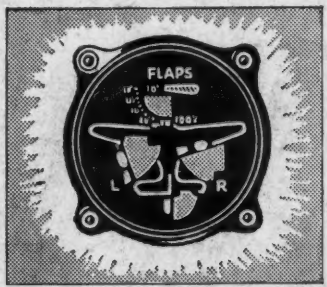
Wings of Victory

Electricity helps make America's war planes some of the world's most deadly weapons. Here are a few of the ways in which G-E equipment serves in the air.

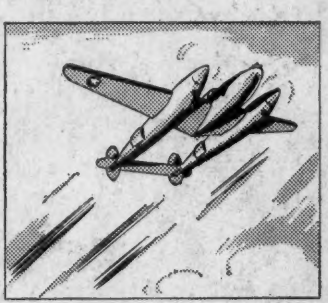


1. Lamps are the eyes of the plane at night, ranging in size from cockpit lamps no larger than a pea to landing lamps of more than half-a-million candlepower.

2. Radio combines the voice and the ears of the plane, allowing communication between the pilot and his squadron, and the ground and sea forces.



3. Instruments are the sensitive brain that relays messages to the pilot from all parts of the ship and helps him to control the plane in its flight.



4. Superchargers are the lungs of the plane, pumping extra oxygen to the carburetors, giving our planes the altitude so necessary to modern warfare.

General Electric believes that its first duty as a good citizen is to be a good soldier.

General Electric Company, Schenectady, N. Y.

959-16-211

GENERAL ELECTRIC